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Pamphlets
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The Rectories of Upper Canada...

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THE
RECTORIES
OF
UPPER CANADA:

BEING A
RETURN TO AN ADDRESS
OF
THE HONOURABLE THE HOUSE OF COMMONS,

Dated 11th March, 1839,

FOR

COPIES OR EXTRACTS OF THE CORRESPONDENCE BETWEEN THE LIEUTENANT GOVERNOR
OF UPPER CANADA AND THE SECRETARY OF STATE, ON THE SUBJECT OF THE
CREATION OF RECTORIES IN THAT PROVINCE BY SIR JOHN COLBORNE.

WITH APPENDIX.

COLONIAL OFFICE, *Downing Street*, 26th March, 1839.—H. LABOUCHERE.

TORONTO:

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CONTENTS.

| | PAGE. | | PAGE. |
|--|-------|--|-------|
| 1. Despatch Lord Glenelg to Sir F. B. Head, 31st August, 1836..... | 26 | 28. Additional case, 26th May, 1835..... | 26 |
| 2. Despatch Sir F. B. Head to Lord Glenelg, 17th December, 1836..... | 27 | 29. Opinion of Solicitor General Hagerman, 4th June, 1835..... | 27 |
| 3. Article from Morning Courier, Montreal, 1836..... | 28 | 30. Opinion of Attorney General Jameson, 13th June, 1835, and concurrence of the Executive Council therein, 5th Nov., 1835..... | 28 |
| 4. Minute of Executive Council, 15th Jan., 1836, recommending the establishment of the Rectories..... | 29 | 31. Despatch Lord Glenelg to Sir Geo. Arthur, 26th December, 1837..... | 28 |
| 5. Schedules of Returns of Patents for lands in regard to the Rectories..... | 30 | 32. Despatch of Lord Glenelg to Sir Geo. Arthur, 9th February, 1838..... | 30 |
| 6. Despatch Sir F. B. Head to Lord Glenelg, 2nd May, 1837..... | 30 | 33. Case submitted by Lord Glenelg, to the Law Officers of the Crown, 19th Dec., 1837..... | 30 |
| 7. Memorials of the Delegates of the Church of Scotland, assembled at Cobourg, April, 1837..... | 31 | 34. Extract Despatch, Viscount Goderich, to Sir John Colborne, 21st Nov., 1831..... | 31 |
| 8. Despatch Lord Glenelg to Sir F. B. Head, 6th July, 1837..... | 31 | 35. Despatch, Viscount Goderich to Sir John Colborne, of same date..... | 31 |
| 9. Case submitted to the Law Officers of the Crown in England, 12th April, 1837..... | 33 | 36. Draft of Message to the Legislature of Upper Canada, accompanying same..... | 33 |
| 10. Opinion of the Law Officers of the Crown, 8th June, 1837, declaring the Rectories invalid..... | 34 | 37. Draft of Bill to be laid before the Legislature, accompanying same..... | 34 |
| 11. Despatch Sir F. B. Head to Lord Glenelg, 16th September, 1837..... | 35 | 38. Confidential Despatch, Viscount Goderich to Sir John Colborne, 5th April, 1832..... | 35 |
| 12. Despatch of Earl Bathurst to Sir P. Maitland, 2nd April, 1818..... | 35 | 39. Commission to the Earl of Gosford, as Governor General, 13th June, 1835..... | 36 |
| 13. Despatch of Earl Bathurst to Sir P. Maitland, 22nd July, 1825..... | 40 | 40. Opinion of the Law Officers of the Crown, 24th January, 1838, declaring the Rectories to be valid..... | 40 |
| 14. Minute of Executive Council, 21st Nov., 1825..... | 40 | 41. Despatch Sir George Arthur to Lord Glenelg, 11th July, 1838..... | 40 |
| 15. Despatch Sir F. B. Head to Lord Glenelg, 16th Sept., 1837..... | 41 | 42. Letter from Secretary the Hon. John Macaulay, to the Moderator of Synod, 2nd July, 1838..... | 41 |
| 16. Memorial from Synod of Church of Scotland in Canada, 6th Sept., 1837..... | 42 | 43. Despatch Sir George Arthur to Lord Glenelg, 22nd Sept., 1838..... | 42 |
| 17. Despatch Lord Glenelg to Sir F. B. Head, 15th Nov., 1837..... | 42 | 44. Address from the Commission of Synod, to Sir George Arthur, 18th July, 1838..... | 42 |
| 18. Despatch Sir F. B. Head to Lord Glenelg, 18th October, 1837..... | 47 | 45. Report of the Executive Council thereon, 9th August, 1838..... | 47 |
| 19. Report of the Archdeacon of York, 12th October, 1837..... | 48 | 46. Address to the Queen, by the Grand Jury of the Bathurst District..... | 48 |
| 20. Attorney General Sewell's Report, of Lower Canada, respecting the erection of Protestant Parishes, 6th June, 1801..... | 49 | 47. Despatch Lord Glenelg to Sir George Arthur, 24th Oct., 1838..... | 49 |
| 21. Patent by the Duke of Richmond, erecting the Parsonage or Rectory, and Parish of Montreal, 12th August, 1818..... | 50 | 48. APPENDIX.—Article from the Toronto Colonist, June, 1852..... | 50 |
| 22. Minute of the Executive Council of Upper Canada, 9th March, 1815..... | 53 | 49. Despatch from Sir P. Maitland, to Earl Bathurst, 17th May, 1819..... | 53 |
| 23. Despatch of Governor Drummond to Governor Gore, 23rd March, 1816..... | 53 | 50. Petition from the Presbyterian Congregation of Niagara, to Sir P. Maitland, 30th March, 1819..... | 53 |
| 24. Act of Upper Canada, relative to tythes, 20th Feb., 1823..... | 53 | 51. Despatch from Earl Bathurst to Sir P. Maitland, 6th May, 1820, recognizing the claim of the Church of Scotland, to a participation in the Clergy Reserves..... | 53 |
| 25. Minute of Clergy Reserve Corporation, 4th Feb., 1835..... | 54 | 52. Despatch from Sir P. Maitland, to Earl Bathurst, 29th Dec., 1825..... | 54 |
| 26. Message from Sir John Colborne to the Executive Council, 29th June, 1835..... | 26 | | |
| 27. Case submitted by Secretary Rowan to the Crown Officers, 8th May, 1835..... | 26 | | |

THE RECTORIES

OF
CANADA.

turn to an Address of the Honourable the House of Commons, dated 11th March, 1839; for Copies or Extracts of the Correspondence between the Lieutenant-Governor of Upper Canada and the Secretary of State, on the Subject of the Creation of Rectories in that Province by Sir John Colborne.

H. LABOUCHERE.

Colonial Office, Downing Street,
26th March, 1839.

No. 1.

(No. 92.)

Copy of a Despatch from Lord Glenelg to Sir F. B. Head, K.C.H., Lieutenant-Governor of Upper Canada.

Downing Street, 31st August, 1836.

SIR.—Among the Documents appended to the report of the Committee of the House of Assembly of Upper Canada, to whom was referred your correspondence with your late Executive Council, is a Schedule of the patents for land granted as endowments to the Church of England in that province, and a return of property ceded by certain parties in exchange for endowments. The complete manner in which these returns are drawn up renders it impossible to discover the state of the greater portion of the transactions to which they refer; but it would appear from the reading of one of the returns, that several Rectories have been endowed during the current year; though, I presume, before your assumption of the Government of Upper Canada. As this is a subject of considerable importance, and as it has attracted the notice of the public, both in this country and in the province, I have to request that you will supply me with an explanation of the returns to which I have alluded; specifying the dates at which the several endowments were effected, and, as far as possible, the grounds of the respective grants.

I need not, I am sure, point out to you, that, pending the settlement of the Clergy Reserve question, it is indispensable that no further allotment of church lands should take place, without the express sanction of His Majesty's Government.

I have, &c.,

(Signed) GLENELG.

No. 2.

(No. 101.)

Copy of a Despatch from Sir F. B. Head, K.C.H., Lieutenant Governor of Upper Canada, to Lord Glenelg.

Toronto, Upper Canada, 17th Dec., 1836.

MY LORD,—In compliance with the directions contained in your Lordship's Despatch, No. 92, I have the honour to transmit herewith documents showing the number and nature of the endowments to the Church of England which were made by my predecessor.

Your Lordship will perceive that the patents of these endowments are all dated after my arrival at New York, and while I was on my journey to Toronto; and though I have never mentioned the circumstance before, I will not now withhold from your Lordship, that the feeling which the endowment of these Rectories created throughout the province was one of the many difficulties I had to contend against during the late Elections.

I have, &c.,

(Signed) F. B. HEAD.

Enclosure referred to in No. 2.

(A.)

Morning Courier.

Montreal, Friday, 17th Feb., 1837.

A most animated debate took place in the Upper Canada Assembly on the 9th inst., on the report of the Select Committee to whom the petitions respecting the Rectories, from several Presbyterian Congregations, had been referred. Mr. M'Kay, Chairman of the Committee, submitted a series of resolutions condemnatory of the recent establishment of Rectories in the Province, but proving not quite palatable to the House, they were rejected by a small majority. They went the length of abolishing the Rectories already established. In lieu of them, the following, proposed by Mr. M'Lean, were adopted:—

1st. Resolved, That by the thirty-eighth clause of the Act 31, Geo. 3, cap. 31, power is given to His Majesty to authorize the Governor, Lieutenant Governor, or person administering the Government of this Province, with the advice of the Executive Council, to constitute and erect within every Township or Parish one or more Parsonages or Rectories according to the establishment of the Church of England, and from time to time to endow such Parsonage or Rectory with lands

authorized and required by that Act to be reserved for the support of a Protestant Clergy.

2d. Resolved, That the power thus vested in the person administering the Government and the Executive Council of this province not having been exercised for a period of nearly half a century, the inhabitants of the province had good reason to believe that no attempt would be made to carry it into effect, more especially when the Provincial Legislature had been invited to legislate, by the Imperial Government, in relation to the Reserves, from which all endowments must necessarily be made.

3d. Resolved, That the late Lieutenant Governor, with the advice of the Executive Council, established certain Rectories under the power so long suffered, in deference to the public feeling, to remain dormant.

4th. Resolved, That while this House must unequivocally condemn such a proceeding, under the peculiar circumstances of the province, and pending the question as to the disposition of the Clergy Reserves, it regards as inviolable the rights acquired under the patents by which Rectories have been endowed, and cannot, therefore, either invite or sanction any interference with the rights thus established.

5th. Resolved, That in the opinion of this House, the Rectors who have been, or who may be established in this Province, cannot and ought not to exercise any Ecclesiastical or Spiritual power or authority whatever over any portion of the people of this province other than the members of their respective congregations.

6th. Resolved, That as an impression seems to prevail that Rectors so established are entitled to enjoy and exercise general and exclusive Spiritual and Ecclesiastical powers, and it is expedient to remove all grounds of apprehension on this head, a humble Address be presented to His Majesty, praying, in earnest and strong, but respectful terms, that His Majesty will be graciously pleased to convey to the Imperial Parliament the anxious desire of this House, in behalf of the great body of the people of the Province, that as the Provincial Parliament are restrained from legislating on the subject, except under peculiar and embarrassing circumstances, an Act of the Imperial Parliament may be passed to declare, in plain and explicit terms, that the establishment and endowment of Rectories in this Province shall not be construed to confer any right to exercise any ecclesiastical or spiritual power whatever except over the members of the Church of England.

This discussion, which lasted about ten hours, was conducted with great keenness, and every inch of ground was vigorously contested by the Friends of "Justice to all."

(B.)

(Copy.)

Executive Council Chamber at Toronto, Friday,
15th January 1836.
Present.

The Honourable Peter Robinson, Presiding
Councillor.

The Honourable George H. Markland.

The Honourable Joseph Wells.

To His Excellency Sir John Colborne, K. C. B. Lieutenant Governor of the Province of Upper Canada, and Major General commanding His Majesty's Forces therein, &c. &c. &c.

May it please your Excellency,

Pursuant to the views of Lord Goderich, shown by his Despatch of the 5th April, 1832, in which he concurs with your Excellency, and expresses his desire "that a moderate portion of land should be assigned in each Township or Parish for ensuring the future comfort, if not the complete maintenance of the Rectors," the Council caused the necessary steps to be taken for the purpose of setting apart Lots in each Township throughout the Province.

Much delay has been caused by their anxiety to avoid interfering with persons who might have acknowledged claims to any of the Reserves to be selected either for Lease or Purchase.

A difficulty in completing what his Lordship most appropriately calls "this salutary Work" was also caused by the Crown Officers not concurring in the form to be used in the instrument by which the Endowment is to be confirmed, which left the Council to decide as to the mode to be adopted for that purpose.

These obstacles have now been surmounted, and it is respectfully recommended that no time be lost in authorizing the Attorney General to prepare the necessary instruments to secure to Incumbents named in the annexed Schedules, and their successors, the Lots of Land there enumerated as having been respectively set apart for Glebes.

All which is respectfully submitted.

(Signed) PETER ROBINSON, P. C.

(C.)

Return of Patents for Lands granted as Endowments to the Church of England in the Province of Upper Canada, under the authority of an Order in Council dated the 15th day of January, 1832, showing the Date of each Patent, the name of the Minister presented to each Rectory, and the Incumbent, the number of Acres, and Township composing the respective Endowments, as taken from the Records in the Office of the Secretary and Registrar of the Province. [There are forty-four entries appended to this return.]

(D.)

In addition to the foregoing, Patents were also grossed at the same period in the Secretary's office for the following Rectories, under the authority, but were stayed by His Majesty's Attorney General, and have not since been completed. [There are ten entries appended to this return.]

(E.)

A Schedule of patents completed in the Office of the Secretary and Registrar of the Province of Upper Canada, to certain Clergymen of the Church of England, in return for property ceded by them to the Crown for endowments to their respective Rectories.

ries, specifying the different orders in Council and under which the same were granted. [There are six entries appended to this return.]

(F.)

A return of Property surrendered by certain Clergymen of the Church of England and others; showing the value of said Property, and the lands granted in lieu thereof intended as endowments. There are six entries appended to this return.]

No. 3.

(No. 51.)

Copy of a Despatch from Sir F. B. Head, K.C.H., Lieutenant Governor of Upper Canada, to Lord Glenelg.

Toronto, Upper Canada, 2d May, 1837.

My Lord,—I have the honour to transmit to your Lordship a Copy of an Address which has been presented to me by Mr. Hugh Scobie and Mr. David Brodie, requesting me to transmit to your Lordship a Document, purporting to be, "a Copy of an Address to the King by the Assembly of Delegates in connexion with the Established Church of Scotland, who met at Cobourg on the 4th April."

As the object of this Address is to prove, that the Act of the Imperial Parliament, 31 Geo. III. Cap 31, is an infringement of the rights of the petitioners, I do not think it necessary to offer any observations to your Lordship on the subject.

I have, &c.

(Signed)

F. B. HEAD.

Enclosure referred to in No. 3.

(Copy.)

To His Excellency Sir Francis Bond Head, K. C. H., Lieutenant Governor of the Province of Upper Canada, &c. &c. &c.

May it please your Excellency,

We beg leave most respectfully to present your Excellency a Copy of the Address to His Majesty of the Assembly of Delegates in connexion with the Established Church of Scotland, who met at Cobourg on the 14th instant, and pray that your Excellency may be pleased to transmit the same to the Right Honourable Lord Glenelg, Secretary for the Colonies; and also, that you may be pleased to recommend the same to His Majesty's favourable consideration.

And, as in duty bound, we shall ever pray.

(Signed)

WALTER TELFER.

HUGH SCOBIE.

DAVID BRODIE.

Cobourg, April 17th, 1837.

(Copy.)

To the King's most Excellent Majesty.
May it please your Majesty.

We, your Majesty's most dutiful and loyal subjects, Delegates appointed to meet at Cobourg by the Presbyterian Congregations in Canada, in connexion with the Established Church of Scotland, to consider what measures, at the present crisis, it might be most expedient to adopt, in order to remove the spiritual disabilities under which we labour, beg leave, in the name of the

whole Members of our Church in Canada, most humbly to approach your Majesty, and to express our sincere attachment and Loyalty to your Majesty's Royal Person and Government.

We beg leave most humbly to represent to your Majesty, that the Churches of Scotland and England were established by Acts of the Parliament at the separate Kingdoms, and were confirmed by the Act of Union, whereby a "Communication of all Rights, Privileges, and Advantages is secured to the subjects of either Kingdom," and therefore the Status of the Two Churches so established is co-ordinate in the British Colonies.

With the utmost deference, we humbly state to your Majesty that the fundamental principles of the Act of Union, which were guaranteed to us with so much Jealousy by our Forefathers in perilous Times, and which every true Scotsman must always consider a birthright not to be infringed upon, cannot be in any way affected by an Act of the Imperial Parliament of Great Britain without doing manifest injustice to your Majesty's dutiful and loyal Scottish subjects.

The Act of the Imperial Parliament, 31 Geo. 3. c. 31., appears to your Majesty's petitioners to be an infringement upon their rights, in so far as it provides for the establishment and endowment of Rectories in Canada and the presentation of Incumbents or Ministers of the Church of England thereto, with the powers thereby conferred on them: and the recent Establishment and Endowment of Fifty-seven Rectories in this Province is a further infringement upon their rights, in respect that these Incumbents or Ministers are invested with spiritual jurisdiction, not only over your Majesty's dutiful and loyal subjects of the sister Church, but also over all Denominations of Christians within the bounds of their respective Rectories.

Your Majesty's Petitioners anxiously hoped that the authority which your Majesty was graciously pleased to transmit to your late Representative, Sir John Colborne, in this Province, to refer the settlement of the Disputes which had arisen in the Colony respecting the Clergy Reserves to the local Parliament, would have prevented your Majesty's late Representative from establishing and endowing the Rectories above alluded to; and your Petitioners are unwilling to assume that your Majesty would have instructed your Representative at that time to establish these Rectories; and we most humbly assure your Majesty that that Act has tended more than any other circumstance to diminish the estimation of a large majority of your Majesty's loyal subjects of the equity and wisdom of your Majesty's Government in this Province.

Your Petitioners therefore most humbly pray, that your Majesty may be graciously pleased to listen to our Complaints, and to take them into your Royal Consideration, and to adopt such measures, in terms of the Act of the General Assembly of the Church of Scotland passed 1833, as will constitute all Sessions, Presbyteries and Synods which now are or hereafter may be in connexion

with the Church of Scotland in Canada, into Bodies Corporate, to the effect of holding Lands, Buildings, and other Property for Ecclesiastical and Educational purposes, and as will give effect to the judgments and proceedings of our Ecclesiastical Courts in matters spiritual, in the same manner as is done in Scotland; and also such measures as will effectually remove the Disabilities of which we complain, and place us on that footing to which by the Act of Union we are entitled, but restricting both the powers of our Clergy and also of those of the sister Church to the members of their own Congregations within this Province.

And, as in duty bound, Your Petitioners will ever pray.

(Signed by Twenty-six Delegates.)

No. 4.

(No. 199.)

COPY of a DESPATCH from Lord GLENELG to Sir F. B. HEAD, Bart., Lieutenant Governor of Upper Canada.

Downing Street, 6th July, 1837.

SIR,—I have received your despatch, dated the 2d May last, No. 51, enclosing the copy of an address to the King, by the assembly of Delegates, in conjunction with the established church of Scotland, and the copy of an address from the same parties to yourself, praying you to transmit to me the copy of the address to the King, and to recommend the same to His Majesty's favorable consideration.

This address, as you have observed, asserts that the Constitutional Act of the Canadas of the year 1791 is an infringement of the rights of the petitioners; you therefore think it needless to offer any observations on the subject. I entirely concur with you in thinking, that, in the administration of the Government of the Province, neither Her Majesty's confidential advisers nor you had any proper concern with the question, whether the Constitution of 1791 was wisely framed, or consistent with the just pretensions of each of the three Kingdoms now constituting the United Kingdom of Great Britain and Ireland. It is sufficient for us to know, that the British Legislature have enacted that law, and that the Legislature of the United Kingdom is alone capable to repeal or to amend it. The duty of the Executive Government is simply to execute its provisions. In this conclusion you have rested, and there also I should have been inclined to terminate the discussion, if I had not recently found cause to suppose that the Act of 1791 has received an erroneous construction from the petitioners, as well as from others of deservedly great authority in the Province. It is important to rescue the Constitution from a censure and a consequent unpopularity to which it is not justly obnoxious.

The petitioners maintain that the Act of 1791 is an infringement on their rights, because it provides for the endowment of Rectories in Canada, and for the presentation of Ministers of the Church of England as incumbents and because it invests those incumbents with spiritual jurisdiction

over all denominations of Christians within the bounds of their respective Rectories. To show that this alleged grievance is not merely a theoretical evil, but a practical wrong, the petitioners refer to the establishment of fifty-seven Rectories in January 1836. They complain of this measure as a departure from the pledge of the Crown to refer to the local Parliament the settlement of the disputes which had arisen respecting the Clergy Reserves, and declare themselves unwilling to assume that the King would at that time have instructed His Majesty's representative to have established those Rectories; they then declare that this Act has tended more than any other circumstance to diminish the estimation of the equity of His Majesty's Government in the Province, and as a reparation they call upon the King, in substance, to invest the Church of Scotland with powers co-extensive with those which are enjoyed by the sister Church of England, but to restrict the spiritual authority of both to their own peculiar members. Without expressing a decided opinion as to the nature and extent of the spiritual jurisdiction which would accompany the creation of any Rectories under the Act of 1791, I trust that the following explanation of the measure which I have taken in the interval which has elapsed since I received your despatch of the 17th December last, No. 101, upon the subject of the fifty-seven Rectories created by an Act of your immediate predecessor in the Government, will convince the petitioners of the Church of Scotland that they have to a certain extent misapprehended the Act of 1791, so far at least as that Statute may be supposed to have authorized the establishment of the Rectories in question.

You are aware that your Despatch of the 17th December 1836, contained the first official intimation which ever reached me of the Rectories having been either established or endowed. The fact had been asserted in Parliament, but I was not only officially uninformed, but really ignorant that it had occurred; I therefore requested you to supply me with the necessary information, and until it reached me in the month of February last I was entirely destitute of all authentic intelligence as to what had really been done.

You will not, I trust, even for a moment, suppose that I refer in the spirit of censure or complaint to the silence of the Provincial Government on this occasion; it admits of an obvious explanation. The creation and endowment of the Rectories was almost the last Act of Sir John Colborne's Administration; and as at that time you were actually on your way from New York to Toronto your predecessor probably assumed that the proceeding would be reported by you, he having, at last, as it may well be imagined, scarcely leisure enough for the discharge of his many indispensable and urgent public duties. On the other hand, it is impossible not to respect the feelings which imposed upon you to enter on the subject. Regretting the measure itself as creating a new embarrassment in your path, at that time beset by difficulties of no ordinary kind, and naturally regarding it as

remediable, you preferred to contend with this obstacle silently rather than to avail yourself of it, either as an apology in the event of failure, or as enhancing your own merit in the event of success. To this generous solicitude for the credit of your immediate predecessor I have always attributed our omission to report his proceedings with regard to the Rectories; and I fully admit, that with the opinion which you entertained, and could scarcely have failed to entertain, as to the validity of the Act itself, the motives for making it a subject of correspondence were but few and of no great weight.

Although, for the reasons to be subsequently stated, I am compelled to think that the creation and endowment of the Rectories were not lawful measures, yet it would be most foreign to my real intention if I should be supposed to cast any doubt on the propriety of Sir John Colborne's conduct in reference to them. That distinguished officer has given too many proofs of his devotedness for His Majesty's service, and for the good of the King's subjects, to permit the admission of even a surmise injurious to his public spirit on any or any other occasion; and although I may differ from him in opinion as to the expediency of establishing the Rectories, especially at the moment chosen for that purpose, yet I am convinced that Sir John Colborne would as readily as any man acknowledge that opposite views of the public interest, upon any particular question, may be entertained by men engaged in the same branch of His Majesty's service without derogating in the slightest degree from their mutual esteem and confidence. Indeed, in proportion to the strength of those feelings will usually be the freedom with which such opposite views are avowed and discussed.

On receiving your Despatch of the 17th December, it appeared to me very questionable whether any adequate legal authority existed for the creation or endowment of the Rectories. I did not need perceive any possible ground for disputing the right of the Lieutenant Governor in Council to proceed to that measure, if previously sanctioned by the King; but on referring to the commissions of Lords Aylmer and Gosford, to the general instructions accompanying them, to the correspondence between this department and the Provincial Government, and to the minutes of the Executive Council of the 15th January, 1836, it appeared to me that no such sanction had ever been given. The grounds of this opinion you will learn from the accompanying copy of the communication which I thought it necessary to address to the King's Advocate and to the Attorney and Solicitor General.

The Law Officers of the Crown received that reference on the 12th April, and reported to me in answer on the 8th ultimo. The delay is readily accounted for by the great importance of the question, and by the anxiety of His Majesty's Legal Advisers to offer no immature judgment on any occasion. I enclose for your information a copy of their report. You will find that they

declare their opinion to be, that the erection and endowment of the fifty-seven Rectories by Sir J. Colborne are not valid and lawful Acts.

I confess myself to be much embarrassed by this decision; it imposes upon Her Majesty's Government a duty which is for many reasons exceedingly irksome. The demands of the members of the Church of Scotland would forbid a silent acquiescence in what has been done, even if such inaction were otherwise compatible with the obligations of the office which I have the honour to hold; yet I feel that by acting on the advice of the Law Officers of the Crown in this instance I shall inevitably appear to be assuming an attitude of opposition to the interests of the Church of England. I can, however, only pursue the straight path which lies before me; trusting that if I shall not at first escape misconstruction, I shall ultimately be acquitted by the parties more immediately concerned of any failure in the affection and veneration for the Church of England which should characterize every sincere member of her communion.

It is of course possible that the statement on which the Law Officers of the Crown have founded their opinion may be erroneous or defective, although it is certain that the utmost care and labour have been bestowed on the investigation of the facts of the case. It is also possible that Her Majesty's Legal Advisers may have misapprehended the law, although it is equally clear that they have bestowed their most patient and laborious attention on the questions proposed to them. But, adverting to each of these possible sources of error, my first solicitude is to ascertain whether any such mistake has really occurred. You will therefore have the goodness to communicate a copy of this Despatch to the Archdeacon of Toronto, who will probably think it right to lay it before the Bishop of Montreal, who is now officiating as Bishop of the Diocese of Quebec; and you will invite his Lordship and the Archdeacon to inform you whether they are aware of any material fact omitted in the case laid before the Crown Lawyers, or inaccurately stated there, or of any important argument which may be supposed to have escaped the notice of those learned persons. If any such error or oversight shall appear to you to have been committed, you will suspend all further proceedings until you have reported on the case to me, and shall have received my further instructions.

If no such error shall be pointed out by the Bishop or the Archdeacon, or shall occur to yourself, you will then consult with them as to the method by which the question of law can be brought to an adjudication with the least delay, inconvenience, and expense, and with the least danger of placing the Local Government in the invidious position of being engaged in an open controversy with the Church of England in the Province. I trust that some method will be found of obtaining the judgment of the Court of Queen's Bench in a form which will exclude the supposition of any unfriendly feeling on either side. On

this subject you will, of course, act under the guidance of your legal advisers. It matters little what may be the shape of the litigation, if it shall avoid every semblance of hostility, and shall be such as to bring the question of law fully to adjudication in such a manner as will enable either party to bring the cause by appeal under the review of the Judicial Committee of the Privy Council.

I have assumed that the Bishop and the Archdeacon would not think themselves at liberty to surrender the rights, apparently vested in the Church of England, in deference to the opinion of Her Majesty's legal advisers, and without the previous judgment of the proper legal tribunals. I must go further, and avow my opinion that such a surrender is neither to be asked nor desired. Her Majesty's Government repose indeed in the law officers the confidence to which their high professional reputation gives them so just a title; but I am persuaded that it would be more satisfactory to those learned persons themselves, as it would be far more agreeable to me and my colleagues, that claims of such peculiar delicacy and importance should be decided, not on the responsibility only of the judgment of the Queen's Advocate and the Attorney and Solicitor General, but on that of the proper tribunals, after a full investigation of all the facts of the case, and of all the principles of law bearing upon them.

On such subjects as the present, little advantage is gained, while much inconvenience is incurred by concealment. The public at large are so deeply interested in the result, that they are entitled to know the progress of the discussion, when no positive injury can arise from the disclosure; you have therefore my authority to communicate this Despatch or any passages of it which you may think it not inconvenient to communicate to the petitioners of the Church of Scotland, as the answer to their application. They will perceive that their request for the grant of certain peculiar advantages to their own church proceeds on an assumption, the accuracy of which is yet to be decided,—the assumption, namely, that the Church of England has acquired a valid and lawful title to the endowments made in her favour in January, 1836, and to the spiritual jurisdiction which is supposed to be incident to those endowments.

I have, &c.,
(Signed) GLENELG.

First enclosure No. 4.

(Copy.)

Downing Street 12th April, 1837.

SIR,—The Statute 31 Geo. 3. c. 31. s. 38. enables His Majesty to authorize the respective Governors of Lower Canada and of Upper Canada, with the advice of the Executive Council, to constitute within each Township or Parish a Parsonage or Rectory according to the Establishment of the Church of England, and to endow every such Parsonage or Rectory with so much of the Clergy Reserves as the Governor, with the advice of the Council, shall judge to be expedient, under the

then existing circumstances of such Township or Parish.

The Governor's Commission, dated the 6th of July 1835, following in this respect the ancient and established form, authorizes the Governor, or in his absence the Lieutenant Governor, with the advice of the Executive Council, to erect Parsonages in each Township or Parish according to the Establishment of the Church of England, and to endow any such Parsonage or Rectory with any part of the Clergy Reserves, "subject nevertheless" (to quote the precise words of the commission) "to such Instructions touching the premises as shall or may be given you by us under our signet and sign manual, or by our order in our Privy Council, or through one of our principal Secretaries of State."

Thus the authority which His Majesty was enabled by Parliament to impart to the Governor, was, in fact, so imparted to him, subject to the King's further instructions.

From the date of the Statute 31st Geo. 3. until the year 1835 the power of constituting and erecting Parsonages or Rectories was never exercised in Upper Canada; but at the close of that year it was called into exercise by the then Lieutenant Governor Sir John Colborne. The intention to adopt this measure was not communicated by Sir John Colborne to His Majesty's Government, nor was the measure itself ever reported by that officer, having been taken immediately before his resignation of the Government into the hands of his successor Sir Francis Head. The total number of Rectories thus established appears to have been fifty-seven.

Having recently received from Sir Francis Head a report on the subject, enclosing the Minutes of the Executive Council of Upper Canada of the 15th January 1836, I enclose a copy of those Minutes. You will perceive from them that the Council founded their recommendation of this measure on a despatch from Lord Goderich of the 5th April 1832, from which they quote one passage. That passage, however, is not accurately described. Lord Goderich is represented in the Minutes as expressing his desire "that a moderate portion of land should be assigned to each Township or Parish for ensuring the future comfort, if not the complete maintenance, of the Rectors." On referring to the despatch itself it appears that it expressed his Lordship's opinion that the greatest benefit to the Church of England would be derived from applying a portion at least of the funds under the control of the Executive Government "in preparing, as far as may be practicable, for profitable occupation, that moderate portion of land which you (Sir J. C.) propose to assign in each Parish for increasing the future comfort if not the complete maintenance of the Rectors." The distinction between the Earl of Ripon's language and the terms in which it is thus quoted is important. It conveys no suggestion of his Majesty's pleasure, nor indeed any instruction, respecting the erection of Parsonage and Rectories, nor even with regard to the grant

land for the maintenance of the Clergy. The main subject of the passage is the application of certain funds in preparing for profitable occupation certain lands, and those lands are indicated merely by a passing reference to some intention entertained and announced by Sir John Colborne. The records of this office contain no despatch from Sir J. Colborne in which any allusion is made to the subject. It may therefore be inferred that Sir J. Colborne's intentions were made known to Lord Ripon through some private and unofficial channel.

The Council however appear to have understood Lord Ripon's Expressions as such an intimation of the King's pleasure as would justify the erection and endowment of fifty-seven Rectories. That the words were not designed by his Lordship to be so understood may with some confidence be inferred from the following circumstance:—the Statute 31 Geo. 3. sec. 36 to 40 enables the Provincial Legislature, on certain conditions, to repeal so much of that Act as relates to the Clergy Reserves. On the 21st of November 1831, that is, six months before the date of the despatch to which reference is made by the Executive Council, Lord Ripon addressed to Sir John Colborne a despatch, in which the Provincial Legislature were invited to exercise this power, and he expressly recommended that the repeal should embrace all the clauses in question, amongst which were included those which relate to the erection and endowment of Rectories. The despatch of the 5th of April 1832 was marked "confidential;" and it would seem impossible that Lord Ripon should have designed by such a communication to convey to the Lieutenant Governor the King's sanction for neutralizing to a considerable extent the effect of that repeal, which five months before his Lordship had recommended in a public despatch.

I enclose for your perusal copies of the two despatches of the 21st November, 1831, and of the 5th of April, 1832.

The questions which I would propose for your consideration are the following:

First. Adverting to the terms of the Statute, 31 George 3rd, Chapter 31, section 36 to 40, and to the terms of the Royal Commission, could the Lieutenant Governor, with the advice of the Executive Council, lawfully constitute and erect or endow any Parsonage or Rectory within the Province without the further signification of His Majesty's pleasure?

Secondly. Can Lord Ripon's Despatch of 5th April, 1832, be regarded as signifying His Majesty's pleasure for the erection of Parsonages or for the endowment of them, or for either of those purposes.

Thirdly. Are the erection and the endowment of the fifty-seven Rectories by Sir J. Colborne valid and lawful acts?

Fourthly. If the preceding questions be answered in the affirmative, have the Rectors of the Parishes so erected and endowed the same ecclesiastical authority within their respective limits as are

vested in the Rector of a Parish in England, or within what other bounds is that authority restricted?

You will have the goodness to consider these questions in consultation with the King's Advocate and Mr. Solicitor General, and report to me your and their joint opinion upon them.

I have, &c.,

(Signed)

GLENELG.

The Attorney General, &c. &c. &c.

Second Enclosure in No. 4.

(Copy.)

Doctors Commons, 8th June, 1837.

My Lord,—We are honoured with your Lordship's letter of the 12th of April, stating that the Statute 31 Geo. 3, c. 31 to 38, enables His Majesty to authorize the respective Governors of Upper Canada and of Lower Canada, with the advice of the Executive Council, to constitute within each Township or Parish a Parsonage or Rectory, according to the establishment of the Church of England, and to endow every such Parsonage or Rectory with so much of the Clergy Reserves as the Governors, with the advice of the Council, shall judge to be expedient under the then existing circumstances of such Township or Parish.

That the Governor's Commission, dated the 6th July, 1835, following in this respect the ancient and established form, authorizes the Governor, or in his absence the Lieutenant Governor, with the advice of the Executive Council, to erect Parsonages in each Township or Parish according to the establishment of the Church of England, and to endow any such Parsonage or Rectory with any part of the Clergy Reserves, "subject nevertheless (quoting the precise words of the Commission) to such instructions touching the premises as shall or may be given you by us, under our Signet and Sign Manual, or by our order in our Privy Council, or through one of our Principal Secretaries of State."

Thus the authority which His Majesty was enabled by Parliament to impart to the Governor was in fact so imparted to him, subject to the King's further instructions.

That from the date of the Statute 31 Geo. 3, until the year 1835, the power of consolidating and erecting Parsonages or Rectories was never exercised in Upper Canada; but that at the close of that year it was called into exercise by the then Lieutenant Governor Sir John Colborne. That the intention to adopt this measure was not communicated by Sir John Colborne to His Majesty's Government, nor was the measure itself ever reported by that officer, having been taken immediately before his resignation of the Government into the hands of his successor, Sir F. Head.

That the total number of Rectories thus established appears to have been fifty-seven.

That having recently received from Sir F. Head a report on the subject, enclosing the minutes of the Executive Council of Upper Canada of 15th January, 1836, your Lordship encloses a copy of those minutes.

That we shall perceive from them that the Council founded their recommendation of this measure on a despatch from Lord Goderich of the 5th April, 1832, from which they quote one passage; that passage, however, is not accurately described. That Lord Goderich is represented in the minutes as expressing his desire "that a moderate portion of land should be assigned in such Township or Parish for ensuring the future comfort if not the comfortable maintenance of the Rectors."

That, on referring to the despatch itself, it appears that it expressed his Lordship's opinion that the greatest benefit to the Church of England would be derived from applying a portion at least of the funds under the control of the Executive Government "in preparing, as far as may be practicable for profitable occupation, that moderate portion of land which you (Sir J. Colborne) propose to assign in each Parish for increasing the future comfort, if not the complete maintenance of the Rectors." The distinction between the Earl of Ripon's language and the terms in which it is thus quoted is important. It conveys no signification of His Majesty's pleasure, nor indeed any instruction respecting the erection of Parsonages and Rectories, nor even with regard to the grant of land for the maintenance of the Clergy. The main subject of the passage is the application of certain funds in preparing for profitable occupation certain lands, and those lands are indicated merely by a passing reference to some intention entertained and announced by Sir J. Colborne. That the records of the Colonial Office contain no Despatch from Sir J. Colborne, in which any allusion is made to the subject. It may therefore be inferred that Sir J. Colborne's intentions were made known to Lord Ripon through some private and unofficial channel.

The Council, however, appear to have understood Lord Ripon's expression as such an intimation of the King's pleasure as would justify the erection and endowment of fifty-seven Rectories. That the words were not designed by his Lordship to be so understood may, with some confidence, be inferred from the following circumstances:—The Statute 31, Geo. 3, s. 36 to 40, enables the Provincial Legislature, on certain conditions, to repeal so much of that Act as relates to the Clergy Reserves; on the 21st of November, 1831, that is, six months before the date of the despatch to which reference is made by the Executive Council, Lord Ripon addressed to Sir J. Colborne, a despatch, in which the Provincial Legislature were invited to exercise this power, and he expressly recommended that the repeal should embrace all the clauses in question, amongst which are included those which relate to the erection and endowment of Rectories.

That the Despatch of the 5th of April, 1832, was marked "Confidential," and it would seem impossible that Lord Ripon could have designed by such a communication to convey to the Lieutenant Governor the King's sanction for neutralizing, to a considerable extent, the effect of that repeal which five months before his Lordship had recommended in a public Despatch.

Your Lordship encloses for our perusal copies of the two Despatches of the 21st of November, 1831 and of the 5th April, 1832.

The questions which your Lordship is pleased to propose for our consideration are the following:—

First. Adverting to the terms of the Statute 31s. Geo. 3, Cap. 31, Sec. 36 to 40, and to the terms of the Royal Commission, could the Lieutenant Governor, with the advice of the Executive Council lawfully constitute and erect or endow any Parsonage or Rectory within the Province without the further signification of His Majesty's pleasure?

Secondly.—Can Lord Ripon's Despatch of the 5th April, 1832, be regarded as signifying His Majesty's pleasure for the erection of Parsonages or for the endowment of them, or for either of those purposes?

Thirdly. Are the erections and endowment of the fifty-seven Rectories by Sir J. Colborne, valid and lawful Acts?

Fourthly. If the preceding questions be answered in the affirmative, have the Rectors of the Parishes so erected and endowed the same ecclesiastical authority within their respective limits as is vested in the Rector of a Parish in England, or within what other bounds is that authority restricted?

And your Lordship is pleased to request that we would consider these questions in consultation, and report to your Lordship our joint opinion upon them.

In obedience to your Lordship's commands we have considered the several questions, and have the honor to report that, adverting to the terms of the Statute 31 Geo. 3, cap. 31. sec. 36. to 40., and to the terms of the royal commission, we are of opinion that the Lieutenant Governor, with the advice of the Executive Council, could not lawfully constitute and erect or endow any Parsonage or Rectory within the Province without the further signification of His Majesty's pleasure.

Secondly. We are of opinion that Lord Ripon's despatch of the 5th April 1832 cannot be regarded as signifying His Majesty's pleasure for the erection of Parsonages, or for the endowment of them, or for either of those purposes.

Thirdly. We are of opinion that the erection and the endowment of the fifty-seven Rectories by Sir J. Colborne are not valid and lawful Acts.

We have, &c.

[Signed] J. DODSON.
J. CAMPBELL.
R. M. ROLFE.

The Lord Glenelg.
&c. &c. &c.

No. 5.

(No. 102.)

COPY of a DESPATCH from Sir F. B. HEAD, Bart., Lieutenant Governor of Upper Canada, to Lord GLENELG.

Toronto, 16th September, 1837.

MY LORD,—I have the honour to inform your Lordship, that in obedience to your Lordship's

commands, as expressed to me in your Despatch. No. 199, dated 6th July, 1837, I immediately communicated a copy of the said despatch to the Archdeacon of York, whose Report on the subject of the Rectories shall be transmitted to your Lordship as soon as I shall receive it. In the meanwhile, however, I deem it advisable to forward to your Lordship copies of the following documents, which appear to me to bear upon the case submitted by your Lordship for opinion to the King's Advocate and to the Attorney and Solicitor General:—

1. Copy of a Despatch from Lord Bathurst to Mr. President Smith, dated 2nd April, 1818.
2. Copy of a Despatch from Lord Bathurst to Major General Sir Peregrine Maitland, dated 22nd July, 1825.
3. Copy of a Report of the Honourable the Executive Council, on the subject of Parsonages and Rectories, to be constituted and erected in every Township or Parish within this Province, according to the Establishment of the Church of England, dated 21st November, 1825.

I have, &c.

(Signed) F. B. HEAD.

First Enclosure referred to in No. 5.

(Copy.)

Downing Street, 2nd April, 1813.

SIR,—The Bishop of Quebec has frequently sought under my consideration the advantages which would result to the interests of the Church of England in the Province under your Government, from the legal establishment of Parishes and Rectories, in conformity with the provision contained in the 31st Geo. 3, cap. 31.

As I entirely concur with his Lordship in the propriety of adopting a measure calculated to give to the Protestant Church in the Canadas the support which it was in the contemplation of the Parliament of this country to afford to it, I have not failed to submit his Lordship's representation to the Prince Regent, and I have received His Royal Highness's commands to instruct you to take the necessary legal measures for constituting and erecting Rectories and Parishes in every Township within the Province under your Government; and you will also take care that it be distinctly understood that the constitution of Parishes and Rectories can give no claim whatever to any incumbent to receive tithes of the land within the limits of his Parish; all claim of that nature having been effectually annulled by the provision for the support of a Protestant Clergy made in the 1st of the King, and by the declaratory law passed by the Legislature of the Province in 1816. The endowment of the several Rectories with portions of the Clergy Reserves will be necessarily a matter of future consideration, and until the more general settlement and cultivation of the Province shall have taken place, I consider it advisable that the management of the several Reserves should, as is the case in the Lower Pro-

vince, be vested in a corporate body, or continue, as at present, under the control of the Lieutenant Governor and Executive Council.

I have, &c.

(Signed)

BATHURST.

Mr. President Smith,

&c., &c., &c.

Second Enclosure referred to in No. 5.
(Copy.)

Downing Street, 22nd July, 1825.

SIR,—I have received His Majesty's commands to direct that you do from time to time, with the advice of the Executive Council for the affairs of the Province of Upper Canada, constitute and erect within every Township or Parish which now is or hereafter may be formed, constituted, or erected within the said Province, one or more Parsonage or Rectory or Parsonages or Rectories, according to the establishment of the Church of England; and that you do from time to time, by an instrument under the Great Seal of the said Province, endow every such Parsonage or Rectory with so much or such parts of the land so allotted and appropriated as aforesaid in respect of any lands within such Township or Parish which shall have been granted subsequently to the commencement of a certain Act of the Parliament of Great Britain, passed in the thirty-first year of the reign of His late Majesty King George the Third, intitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intitled 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,'" or of such lands as may have been allotted and appropriated for the same purpose by or in virtue of any instruction which may have been given by His said late Majesty before the commencement of the said Act, as you shall, with the advice of the said Executive Council, judge to be expedient under the existing circumstances of such Township or Parish.

You shall also present to every such Parsonage or Rectory an incumbent or minister of the Church of England who shall have been duly ordained according to the rites of the said church, and supply from time to time such vacancies as may happen therein.

I have, &c.

(Signed)

BATHURST.

Major General Sir Peregrine Maitland, K.C.B.

Third Enclosure referred to in No. 5.
(Copy.)

Executive Council Chamber at York, Monday, 21st November, 1825.

Present:

The Honourable William Campbell, Chief Justice, Chairman.

The Honourable James Baby.

The Honourable and Reverend Doctor John Strachan.

To His Excellency Sir Peregrine Maitland, K. C. B., Lieutenant Governor of the Province of Upper Canada, and Major General commanding His Majesty's Forces therein, &c. &c. &c.

May it please Your Excellency,

The Executive Council, having had under their consideration the Despatch of the Right Honourable Earl Bathurst, His Majesty's principal Secretary of State for the Colonies, dated Downing street, 22nd July, 1825, directing your Excellency, by His Majesty's commands, to constitute and erect from time to time, with the advice of the Executive Council for the affairs of the Province of Upper Canada, within every township or parish which now is or hereafter may be formed, constituted, or erected within the said Province, one or more Parsonage or Rectory, or Parsonages or Rectories, according to the establishment of the Church of England; and that your Excellency do from time to time, by an instrument under the Great Seal of the said Province, endow every such Parsonage or Rectory with so much or such parts of the land so allotted and appropriated as aforesaid, in respect of any lands within such township or parish which shall have been granted subsequently to the commencement of a certain Act of the Parliament of Great Britain, passed in the thirty-first year of the Reign of His late Majesty King George the Third, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" or of such lands as may have been allotted and appropriated for the same purpose, by or in virtue of any instruction which may have been given by His said late Majesty before the commencement of the said Act, as your Excellency shall, with the advice of the said Executive Council, judge to be expedient under the existing circumstances of such township or parish,—most respectfully report:—

That they are convinced of the propriety of dividing the Province into parishes with as little delay as possible, not only because it appears necessary before the new system of land-granting goes into operation, which implies such division to have previously taken place, but as giving a religious character to the country; but in carrying the measure into effect, the townships not being of equal dimensions, though all too large for one parish, the Board find some difficulty in advising into how many they ought to be divided.

On reference to the Surveyor General it is found that a numerous class of townships are those of nine miles by twelve, containing about 69,000 acres, one-seventh of which, or about 9,800 acres, is the appropriation set apart for the maintenance of a Protestant Clergy.

Assuming only two parishes for each of these townships, it is humbly submitted, that the appropriation be divided into three parts, and, after

forming any such township into two parishes by a division as convenient as circumstances will admit, that three thousand three hundred acres, or one-third of the appropriation, be attached as an endowment to the Parsonage of each from the Reserves appertaining or belonging to such parish; and a similar proportion be observed in townships of other dimensions; that the remaining one-third, consisting of about three thousand two hundred acres, be reserved in the possession of the Corporation for general purposes, the same to be sold when it shall be deemed for the interest of the Church; the proceeds of such sale to be funded in the British Stocks, and the interest only to be applied to the support of a Protestant Clergy.

That a general fund gradually accumulating as sales of this one-third take place, will be found extremely convenient for the support of Clergymen in parishes till their respective endowments become available, and, likewise, to supply salaries to the Clergymen established in such towns and villages as may from time to time grow up in different parts of the Province, and for which there is no particular provision, and, likewise, for such dignitaries as the Church establishment may be found to require.

Such general disposable fund becomes further necessary from this circumstance, that many townships were settled before 1791, and, therefore, contain no Reserves—others, in which the Reserves form a block in the middle, and cannot, therefore, be productive for a long time; consequently, the Clergymen of such must in the interim be supported out of the general fund.

That the endowment attached to each Parsonage or parish shall remain with the Corporation for the purpose of managing and leasing till assumed by the incumbent as hereinafter provided; the proceeds, while under such management, being paid into the general fund.

That the two parishes into which any township is divided, may be at first conferred upon the same incumbent, who shall be required to serve at each once in every Sabbath, except where the Ordinary may deem it expedient to order otherwise.

That so soon as any Clergyman shall prefer his endowment to the salary allowed him by Government out of the general fund arising from lands sold or leased, it shall be permitted him to do so; and his salary in such case shall be transferred to another parish. For example, suppose in Cornwall, Brockville, or Kingston, &c., the whole endowment, 6,600 acres, is divided into sixty-six farms of 100 acres each, and that such farms let for £5, they would produce a revenue of £330, on which the incumbent would relinquish his salary of £200 sterling, and take the endowment.

It is further humbly submitted, that as soon as the endowments of each of the parishes into which any township is divided become sufficient to support a Clergyman, one shall be appointed to each at the request of the Ordinary, saving the rights of the incumbent for the time being.

In building Churches, reference, it is respectfully conceived, should be had to the probable population of the parish, so that the number of pews may be sufficient for its accommodation; ut vacant pews, till required by the parishioners, to be at the disposal of the Vestry, by leasing for the benefit of the Church.

It is, also, respectfully recommended, that the incumbents of parishes be restricted in leasing to three lives, or twenty-one years, the usual time in such cases.

As it appears from the Despatch of Lord Bathurst, as well as from 31st of His late Majesty's Act, besides one-seventh of the whole lands, which by that Act has been set apart for the maintenance of a Protestant Clergy, certain other appropriations have, in some instances, been previously made by virtue of instructions from His late Majesty, a Return of these from the Surveyor General, together with the lands appropriated for each township or parish respectively, will be found necessary to enable your Excellency in Council to point out the particular lots or parcels of land which shall form the endowment of any Parsonage or Rectory.

Should your Excellency be pleased to approve of these suggestions, it is humbly submitted, that Lord Bathurst's Despatch, with this Report, be referred to His Majesty's Attorney General, that the necessary legal steps may be immediately taken for dividing the Province into parishes, and constituting and erecting Parsonages or Rectories, with the endowments, as herein advised.

All which is most respectfully submitted.

(Signed) WILLIAM CAMPBELL, C. J.

No. 6.

(No. 103.)

COPY of a DESPATCH from Sir F. B. HEAD, Bart., Lieutenant Governor of Upper Canada, to Lord GLENELG.

Toronto, 16th September, 1837.

MR LORD,—At the request of the Synod of Upper Canada, in connection with the Church of Scotland, I have the honour to transmit to your Lordship an Address from that body to the Queen.

I am further requested to forward two Memorials from the same body addressed to your Lordship, having reference to the claim of that church to a share of the revenue accruing from the Clergy Reserves, and to the Rectories lately constituted in this Province.

I have, &c.

(Signed) F. B. HEAD.

Enclosure in No. 6.

To the Right Honourable Lord Glenelg, one of Her Majesty's Principal Secretaries of State, the Memorial from the Synod of the Presbyterian Church of Canada, in connexion with the Church of Scotland.

MR LORD,—Your memorialists in Synod assembled have received through his Excellency Sir Francis Bond Head an extract of a Despatch

from your Lordship, signifying that the Law Officers of the Crown have given an opinion that the Acts of the late Lieutenant Governor Sir John Colborne, establishing Fifty-seven Rectories in Upper Canada, against which the Presbyterian body of this Province petitioned His late Majesty, were not valid and lawful Acts, and farther, that your Lordship instructed the Lieutenant Governor to the following effect:—"That your Lordship feels it is possible that the statement on which the Law Officers of the Crown may have founded their opinion may be erroneous or defective, and also that they may have misapprehended the law, and that your Lordship has therefore directed his Excellency to invite the Bishop of Montreal and Archdeacon of York to inform his Excellency whether they are aware of any material fact omitted in the case laid before the Crown Lawyers, or inaccurately stated there, or of any important argument which may be supposed to have escaped the notice of those learned persons, and that if any such error or oversight should appear to his Excellency to have been committed, his Excellency is directed by your Lordship to suspend all further proceedings until his Excellency shall have reported to your Lordship on the case, and shall have received your Lordship's further instructions."

Your memorialists not being aware of the reasons why an appeal for information should be made to the Bishop of Montreal and the Archdeacon of York in reference to the grounds on which the local government acted in this instance, especially as all these grounds must have been in possession of Her Majesty's Government at the time the case was submitted to the Law Officers of the Crown, yet since it has pleased your Lordship to make such a reference, your memorialists, whose rights are very materially involved in the proper adjudication of this question, respectfully crave that your Lordship may be pleased to put them in possession of all such information as may be necessary to defend the members of the Church of Scotland in this Province from the injury that may arise from ex-parte evidence.

Your memorialists are given to understand, from high authority, that since the Despatch of Lord Goderich has been declared an insufficient ground for the establishment of these Rectories, that the abettors of the act will allege some Despatch of Lord Bathurst in 1825 as better authority. Your memorialists crave your Lordship's attention to the inconvenience and injustice that may arise to Her Majesty's subjects in this Colony from the Administrators of the local Government acting on Despatches of very old date, especially when Despatches more recent are in their possession, and when the position of colonial affairs which called forth the former may be entirely changed.

Finally, That as your memorialists are of opinion that several of the clauses in the Act 31 Geo. 3, referring to the establishment of the Church of England in this Province with the

same plenitude of privileges she possesses in England, are an infringement of the rights of members of the Church of Scotland in a British Colony as secured by the Treaty of Union, your memorialists respectfully crave that your Lordship may be pleased to advise the withholding of the Royal Assent to this Act until the Presbyterian body in this country shall have been fully heard in their own defence.

Your memorialists, &c.

In name and by appointment of Synod, this
6th day of September, 1837.

ALEX. GALE, Moderator.

No. 7.

(No. 241.)

COPY of a DESPATCH from Lord GLENELG to Sir F. B. HEAD, Bart., Lieutenant Governor of Upper Canada.

Downing Street, 15th November, 1837.

SIR,—I have received your Despatch, No. 102, of the 16th September, informing me of the steps which you had taken on the receipt of my Despatch, No. 199, of the 6th July last, and transmitting copies of several documents which appeared to you to bear on the case referred to. I abstain from expressing any further opinion on this subject, until I shall have received the Report to which you advert from the Archdeacon of York.

I have, &c.

(Signed) GLENELG.

No. 8.

(No. 113.)

COPY of a Despatch from Sir F. B. HEAD, Bart., Lieutenant Governor of Upper Canada, to Lord Glenelg.

Upper Canada, Toronto, 18th October 1837.

My Lord,—Having in compliance with your Lordship's Directions furnished the Archdeacon of York with a Copy of your Lordship's Despatch No. 199, on the subject of certain Rectories established and endowed by Sir John Colborne previously to his leaving this Government, I have now the honour of transmitting to your Lordship the Archdeacon's Report thereon.

I have, &c.,

(Signed) F. B. HEAD.

Enclosure in No. 8.

Report of the Archdeacon of York.

Toronto, Upper Canada, 12th October 1837.

SIR,—I have the honour to acknowledge your letter of the 11th ult., transmitting to me by Desire of His Excellency the Lieutenant Governor, a copy of a Despatch of the Right Honourable Lord Glenelg, Her Majesty's Secretary of State for the Colonies, dated the 6th day of July last, respecting the establishment of certain Rectories in this Province, and the endowing them with Lands for the support of the resident clergymen.

I perceive that his Lordship has been pleased to direct that a reference should be made to me

as Archdeacon of this portion of the Diocese upon the subject of this despatch and its enclosures, in order that I may state to his Lordship whether in the case which he has submitted for the opinion of the Law officers in England any fact or circumstance has been left unnoticed which might have influenced their decision.

I am thankful for the opportunity thus afforded me of communicating officially the following facts in vindication of the course which has been pursued in this part of His Majesty's dominions for affording in time a secure but a very moderate provision for a very small number of the resident clergy of the Church of England.

The clear and express Enactments of the Statute 31st Geo. 3d. Chap. 31, providing for the erection of Parishes in Upper Canada, could not for many years be acted upon in this Province because it continued almost a dense forest till after the American War of 1812. Few or no reserves were leased, and consequently there were no funds at the disposal of the Government; the few Clergymen of the Church of England then resident in the Colony were supported as Missionaries by annual salaries derived from the British Government, and from the venerable society for the Propagation of the Gospel in Foreign parts. But though the situation of the Colony rendered it inexpedient, or rather impossible to erect Parsonages and Rectories, the delay did not arise from any doubt on the part of the Provincial Government that full and sufficient power was given to the Governor or Lieutenant Governor in Council by the Royal Commission, and the Instructions with which it was accompanied: had there been the slightest hesitation on this point in Upper Canada, it would have been removed by the proceedings in the Sister Province. So far back as June 1801, at the instance, I believe, of the Lord Bishop of Quebec, steps were taken to establish Parishes and Rectories in Lower Canada; and in like manner since the peace of 1815 such proceedings have been from time to time had in this Province as seemed best calculated to cherish and gradually to build up the Church as a permanent ecclesiastical establishment for the religious instruction of the inhabitants according to the principles, rites, and ceremonies of the National Church of England.

On the 9th of March 1815 the Executive Council, under the administration of General Sir Gordon Drummond, in reporting on the petition of the Reverend John Strachan for remuneration for monies expended on the Parsonage House of Cornwall for the residence of the Minister of the Church of England, recommended "that whenever a church is erected and a minister appointed to reside in any Township, the Wardens may be authorized to erect a Parsonage House by anticipating the produce of the Clergy Reserves in the Township, by a loan of a sum not exceeding four hundred pounds, the principal and interest of which Loan shall be paid by such person as may be charged with the receipt of the Clergy Reserve rents within the Township as they may become

productive. That the charge on Insurance and ordinary tenant's repairs shall be defrayed by the Incumbent, and all other repairs by such means as the building."

The Report in Council suggesting this principle or future guidance in building and erecting Parsonage Houses was transmitted to the Right Honourable Lord Bathurst, Principal Secretary of State, for the approbation of His Royal Highness the Prince Regent. To this an answer was returned by Lord Bathurst, dated the 10th October 1815:—"The claim of the Reverend Doctor Strachan, the present Minister of York, appears from the Report of the Council to be deserving of consideration, and you will therefore consider yourself authorised to make the payment which they have recommended."

As the fund arising from the rents of Clergy Reserves under lease accumulated very slowly, application was made to His Majesty's Government by the first Bishop of Quebec, soliciting that the clergy in a corporate capacity might be entrusted with the power of leasing; and accordingly the Corporation for managing the Clergy Reserves in Lower Canada was established by an instrument under the Great Seal of that Province in 1816, which instrument had been originally draughted in that Colony by the Law Officers of the Crown. This draught was sent to the Secretary of State for the Colonies, Lord Bathurst, for the approval of the King's Government, and it was returned with the sanction of Government and an order to Sir John Sherbrooke to cause Letters Patent of Incorporation to be issued in the terms of the draught. A similar Instrument, at the instance of the Bishop was recommended by the Executive Council of this Province on the 20th October 1818, and was made Patent under the Great Seal of Upper Canada on the 30th of April 1819. Since that period greater facilities have been afforded to the issue of leases, and their number has in consequence rapidly increased.

About the same time the Lord Bishop of Quebec had earnestly pressed upon the consideration of His Majesty's Government the expediency of dividing the Provinces into Parishes; and it appears, in consequence of his Lordship's application, an instruction from the Secretary of State was transmitted by Mr. President Smith, then administering the Government, dated the 2d day of April 1818, conveying the authority of His Royal Highness the Prince Regent for erecting Parishes and Rectories in conformity to the Statute 31st Geo. 3. Chap. 31. Sect. 38.

The principle already adopted in this Province or building Parsonage Houses appeared so much in accordance with the spirit of this instruction that the Colonial Government was encouraged to proceed as fast as the small means at their disposal allowed, in the hope of at least furnishing, at no distant period comfortable places of residence for the Missionaries then in the Province. As small Parcels of Land were attached to each Parsonage on its erection, it was believed that it

would be easy to complete the endowment with due portions of the Glebes and Clergy Reserves when the Bishop should think proper to proceed to institution. This gradual mode of establishing the Church, though necessarily slow from the smallness of the funds, was nevertheless following by degrees the increasing settlement and cultivation of the Province, and meeting, in as far as the Government was able, its growing wants for religious instruction. Upper Canada even in 1818 was still in comparison a wilderness; and therefore no measure of a general character, constituting and erecting Townships (many without any inhabitants) into Parishes and Rectories, would have been found beneficial. Moreover it could not be foreseen where the population would most rapidly congregate; it was therefore thought most useful and advisable to husband the scanty funds, and reserve them for applications from populous Townships and places as they offered, and decide upon the amount of assistance to be given according to their particular merits. In this way Parsonage Houses were built, or partly so, at Cornwall, Brockville, Bath, Cobourg and Ancaster, and promises made to many other places so soon as the growing funds arising from leases would permit.

Had not their limited means prevented the Provincial Government from proceeding to any great extent with the commands of His Royal Highness the Prince Regent, communicated in this instruction, the question of tithes at this time raised till finally set at rest would have dictated the same course of proceeding. It was considered by the Government of this Province, that under the comprehensive words of the 39th Section of the Statute the regularly inducted Rector of any Parish or Rectory created in pursuance of His Royal Highness' instructions might claim to be entitled to tithes, notwithstanding the evident intention of the Statute that the Clergy of the established Church should receive their support from the produce of the Clergy Reserves.

It was not apprehended that a claim to tithes would in fact be preferred by any Rector so inducted; but it was possible, and to prevent embarrassment and alarm it was thought prudent not to proceed to the full extent of the Royal Instructions which had been transmitted until an Act should be passed by the Colonial Legislature declaring that no right of tithes should ensue upon the Induction into any Benefice in this Province.

A short Act was passed by both Houses of the Legislature of the Colony, declaring "that no tithes should be claimed, demanded, or received by any Ecclesiastical Parson, Rector, or Vicar of the Protestant Church within the Province, any Law, Custom, or usage to the contrary notwithstanding." In this enactment, which the writer of this letter had the pleasure of bringing forward, the Friends of the Church of England fully concurred, for they never desired to retain anything more than they were entitled to by the most obvious construction of a solemn Act of the Bri-

tish Parliament. This Act, being necessarily reserved for the assent of His Majesty, failed even though noticed in the Royal Instruction, to receive the requisite attention in England until the limited period of two years had elapsed, and it could not therefore become a Law.

In the year 1821 a similar Bill was passed, of which a copy accompanies this Letter, and which in conformity with the provisions of the forty-second Section of 31st Geo. 3. Chap. 31., received the sanction of His Majesty and the Imperial Parliament, and was proclaimed on the 20th February 1823.

It was this effort to renounce, on the part of the National Church, any thing which could reasonably seem invidious in the provision made by law for her support that gave occasion to the discussion of a question of which I may truly say that it was started with no hope of the results to which it has been unexpectedly suffered to lead.

Before it can be ultimately disposed of it will be necessary that the sense of Parliament should be pronounced upon the Arguments to be deduced from history, from the principles of the Constitution, from the plain words of the statute, from numerous other acts of the British Parliament, and from a series of public acts in England and the colony, in which the impressions of the Government can be very easily and satisfactorily traced. I shall say no more now on this subject than that if the Church of Scotland had a right to be regarded under the act of union as established anywhere out of Scotland, it was a right of which the people of Scotland, of England, and of the colonies were all equally ignorant until it was discovered in Upper Canada, one hundred and ten years after the act of union; and that if it was really intended by the British Parliament when the 31st Geo. 3, chap. 31, was passed to comprehend the Clergy of the Church of Scotland within the provisions of that statute it was an intention of which the British Government, the Church of Scotland, and her clergy and adherents in and out of this Province were evidently unconscious for thirty years after the statute passed. Of this there is in my opinion satisfactory proof, both negative and positive.

In 1824 and 1825 His Majesty's Government had entered into a contract with a Joint Stock Company for selling to them a large portion of the waste lands of the Crown at a cheap rate, and upon terms of payment very advantageous to the Company. About 2,000,000 of Acres of the Clergy Reserves were to be included in this contract. But the clergy of the Church of England in this province very earnestly appealed to His Majesty's Government against this improvident alienation, and happily their appeal was not made in vain.

The Reserves were excluded from the sale, and by agreement with the Canada Company a block of the other waste lands of the Crown was transferred in their stead.

And further His Majesty was graciously pleased to manifest his desire to place the established

church in this province upon a footing which could alone secure it against the recurrence of a similar danger, by transmitting through his Secretary of State for the colonies, the late Earl Bathurst, a formal instrument, plain and unequivocal in its terms, and which expressly conveyed in the words of the statute the requisite authority for establishing Rectories and Parsonages in Upper Canada, and endowing them with lands, in the discretion of the Governor and Council.

This instruction had no limitations like the one transmitted to President Smith, but was in every respect full and complete. It was officially laid before the Executive Council of the time, soon after its receipt in November, 1825, and the Council prepared and submitted a proposition for erecting and endowing Rectories and Parsonages. This plan was for some time under consideration because a difference of opinion was entertained on its details; there was a doubt as to the proper extent of the parishes, and the portion of land which it would be expedient to annex to each. It was found that the funds, though increasing, were still inadequate to build any number of Parsonage houses at the same time, and there was some reluctance to constitute and erect a great number of Parishes, and annex portions of wild lands yielding no profit, without at the same time bringing them partly into cultivation and building residences for the clergy. There was also a reluctance to adopt any temporary or partial arrangement, while hesitation was felt to act decisively and make a general appropriation of the Clergy Reserves by dividing the whole province into Parishes and endowing each with a sufficient portion of land, while the question had been brought under the consideration of Parliament and the Government in England. These various points were made still more perplexing by the passing of 7 and 8 Geo. 4, chap. 62, authorizing the sale of part of the Clergy Reserves, as it directed the monies arising from the sales to be placed in the British funds, and so removed them from the more immediate control of the Colonial Government. Moreover these sales frequently included Reserves under lease, by which means the proceeds arising from rents were in some degree diminished. These difficulties may well account for the delay during the short remainder of the Peregrine Maitland's Administration; they likewise furnished sufficient motives for inducing Sir John Colborne to take time for consideration. The meanwhile aid continued to be given as before towards the erection of Parsonage houses at Toronto, Port Hope, Woodstock, London, Leamington, &c., as the funds allowed. The clergy were not urgent, and did not press any general plan, reposing in the faith of Government, while they saw was doing all in its power: they waited in tranquillity, fully assured that the interests of the church would not be lost sight of, and that when the proper time arrived a general measure for constituting and erecting Parsonages and Rectories would be adopted, or as soon as met

were at the disposal of the proper authorities to make it efficient.

Thus matters continued for some length of time; but during the latter part of Sir John Colborne's Administration the propriety of turning the lands to some account for the support of the clergy engaged the consideration of the Secretary of State, as appears from the copies of despatches which accompany my Lord Glenelg's correspondence with His Excellency the Lieutenant Governor. Indeed some such course now became absolutely necessary, for His Majesty's Government had by its late arrangements in some degree withdrawn from a most meritorious class of the ministers of the Church that scanty support which they had enjoyed, and which they had little reason to expect would ever have been denied them. It was therefore but a natural sentiment of justice which impelled Lord Goderich to enjoin upon Sir John Colborne the reparation of this loss, by securing in a permanent manner a small fraction of that provision which an act of the British Parliament had assured to them for their support. Moreover the result of the negotiations since entered into by the Secretary of State for the Colonies with the society for the propagation of the Gospel in foreign parts being only of a temporary nature, and implying the discontinuance of any salaries to the successors of the present incumbents, the Colonial Government was obliged without delay to take such measures as might enable it in some degree to meet this alarming contingency. They were also pressed to take active steps in this behalf by the clergy corporation, as appears from the minutes of its proceedings on the 9th February 1835, on which occasion the late Lord Bishop presided.

There was no necessity for considering Lord Goderich's letter an authority or instruction, in accordance with the requirement of the 38th section of 31 George 3. chap. 31.; it is rather to be deemed an injunction or friendly admonition no longer to postpone under any circumstances doing something towards the permanent establishment of the Church. To have sent additional authority would have been superfluous, as the Royal instructions already mentioned were and still are more than sufficient to enable his Excellency the Lieutenant Governor in Council to constitute and erect Parsonages and Rectories with competent Endowments throughout the Province, instead of the very small number to which they have been unfortunately limited.

I would not presume to offer any further explanation of the delay which occurred in carrying the injunction into effect, because Sir John Colborne is in the Country and may be easily referred to.

I know, however, that the measure of constituting these Rectories was no sudden Resolution; but on the contrary it was a long time in progress; that it was retarded by varying opinions upon some points of detail, as well as by the difficulties already noticed; but that nevertheless much progress was made in it, and it was in fact substan-

tially executed before Sir John Colborne had the slightest intimation of an intention to supersede him in his Government.

When this intimation did arrive, His Excellency certainly manifested an unequivocal anxiety to lose no time in completing what had been much more than begun, and did hasten it as much as was in his power.

His motives for this were probably, in the first place, not to leave to the power of chance what he felt it to be his duty to secure, and in the next place to avoid the appearance of leaving to his successor the performance of an Act which he might imagine would with some injure his popularity.

However this may be, I have no doubt that the measure in question is precisely that Act of Lieutenant General Colborne's administration of which the remembrance will ever be most satisfactory to him as a man and a Christian.

With respect to what I find has been said by the friends of the Church of Scotland in regard to the ecclesiastical jurisdiction over other sects which the endowment of these Rectories has conferred upon the Church of England, it is not easy to understand how any number of persons residing in the country could prevail upon themselves to express any serious apprehensions on that score.

Parishes have been for many years erected within the Province of Lower Canada under the same Act of Parliament, and in the other Colonies of British North America, in the West India islands, and in New South Wales. These Rectories which are now complained of have been established nearly two years, and the experience of the past, and the observation of the present, must have equally shown that no person of any other religious community has the slightest reason to suppose that his civil or religious liberty, his person, or his property, will be in any manner interfered with in consequence of these Rectories or endowments. It is in fine notorious that the rights of marriage, baptism, and sepulture, are, by the laws of the Province, common to the teachers of all other Christian denominations with the Clergy of the Church of England.

Whatever, therefore, may have been stated, it is very certain that no such apprehension is, or can, have been felt.

With respect to the land annexed as an endowment, it is, in almost every instance, an insignificant fraction of those Reserves to which the Church of England in this Province has a claim, which ought to be regarded as sacred.

In value it is so small as to be chiefly acceptable to supply fire wood, and in most cases being wild and totally uncultivated, it will yield nothing without incurring a considerable expense; even the very best of the endowments yield a very trifling emolument, and will not for a long time make up for the fifteen per cent. recently deducted from the narrow salary of the incumbents. Indeed those endowments, looking to futurity, when the country is populous and well cultivated,

can scarcely be anticipated in any instance to supply an adequate provision for the sustenance of an educated Minister of the Gospel, and ought not, therefore, to have roused the jealousy of any body of Christians. It must be further borne in mind, that the greater number of these endowments consist of lands which have been in the possession of the several incumbents by licence of occupation from their first settlement in the mission without notice or complaint, and that the only difference now is a greater security of title.

I do not know that the establishment of the Rectories has called forth the language of complaint from any religious community except from the Church of Scotland, of whose members it is remarkable that their illiberal and intemperate hostility to the Church of England in this Province appears to have constantly increased in proportion to the unjust aggressions which they have made upon her rights, and the countenance which these aggressions have unexpectedly received.

Even the House of Assembly, after much discussion, occasioned chiefly by the five or six members belonging to the Church of Scotland who have seats, passed the following resolution by a majority of thirteen: "That this House regards as inviolable the rights acquired under the patents by which Rectories have been endowed, and cannot therefore either invite or sanction any interference with the rights thus established." It is true other resolutions were passed disapproving of their establishment; but to call in question the patents by which they were constituted and erected would have been, as many of the speakers wisely averred, to disturb and unsettle the titles to property throughout the whole Province.

In recapitulation I beg to state, 1st. That however sensible I am of the consideration of His Majesty's Government in making the reference which occasions this letter, I cannot but regret that before submitting to the Crown Officers of England a statement of a case which has led to their expressing an opinion against the legal validity of the Act which has been called in question, the same inquiry was not made which it has been thought just and prudent to institute before their opinion should be acted upon.

2nd. That the case stated for the opinion of the Crown Officers must have conveyed to them clearly the impression, that from the year 1791 to the time of creating these Rectories, no authority had been conveyed from His Majesty through his Secretary of State such as the 38th clause of the Statute 31st George 3, chap. 33, requires; that their opinion is founded upon this impression, and rests, therefore, upon the supposed non-existence of an instrument, two of which of different dates are now before me, and are recorded in the proceedings of the Executive Council of this Province.

3rd. That this provision made for the residing Clergy of the Established Church, partial and insufficient as it unfortunately is, stands upon the express provisions of an Act of Parliament and

the execution of a power given by the King in exact conformity to its enactments; it cannot, therefore, be destroyed to gratify the uncharitable feeling of any person or party, and nothing can deprive the Clergy of the Church of England in this Province of the rights thus secured to them but the over-ruling power of the same Legislature which conferred them. I need not say that an Act of Parliament which should have that for its object would be such an Act as never yet has dishonoured the supreme Council of the Empire.

I observe that the letter of my Lord Glenelg suggests the possibility, though it by no means expresses an expectation or desire, that I may be found willing to surrender or to concur in surrendering voluntarily the endowments which the King has annexed to the several Rectories. Happily the provident caution of Parliament has not placed it in the power of any individual to be the instrument of so much injustice; it is not in my discretion to make any surrender of the kind; if it were, I believe it would not be necessary to assure any one who is personally acquainted with me that I would as readily surrender my life.

I have laboured earnestly for nearly forty years, through good report and bad report, in promoting the peace and happiness of this Province, and its attachment to the Parent State during more than thirty-four years of that period I have been zealously, and, I trust, successfully employed in promoting the cause of true religion and in the discharge of the sacred duties of a Clergyman, and have uniformly acted towards all other Christian denominations with a Christian spirit, which the respectable portion of them will readily acknowledge. I am now approaching the evening of my life, and assuredly I shall never incur the reproach of having sacrificed an portion of the interests of the Church to which I have the happiness to belong, in the wild hope of conciliating her enemies, or from the culpable desire of avoiding the unpopularity which seems to be feared must attach to those who fairly maintain the religion of our Sovereign and of the British Empire.

I have not failed to notice that from the tenor of my Lord Glenelg's despatch it is to be inferred that the petitioners in the name of the Church of Scotland have claimed for their Church the right to be treated in this part of the Queen's dominions upon a footing of perfect equality with the united Church of England and Ireland.

It is not credible that any number of enlightened members of the Church of Scotland could have imposed so far on their own judgment as to believe that it was reserved for two or three laymen in the Legislature of a remote Colony to discover rights and relations resulting from the Act of Union which had escaped consideration and notice in all parts of the British dominions during more than a century. They cannot but be aware that the Act of Union did but protect the rights and privileges of the Church of Scotland within the Kingdom of Scotland in express words, while in language as express, it guarded all the rights

and privileges of the national Church of the Empire in every other part of the British dominions.

They must, beyond all question, know and feel that the claim which they have originated in Upper Canada, to constitute of right a second Church establishment in a British Colony, is a novel pretension, at variance with the principles of the Constitution, and not to be reconciled to the frequently declared sense of Parliament from the time of the Union to the present moment, to the Acts of the Government both in the Mother country and in the Colonies, or to the understanding which has universally prevailed on this point in all parts of the Empire; and there can be as little question that they must have been exceedingly surprised at the facility with which they have been allowed to advance step by step in pretensions, unsupported by the Constitution, by history, by law, or by reason, but which, when they are carried to their full extent, must tend to produce confusion and to unsettle the Ecclesiastical condition of the Empire.

The error will be perceived when it is too late to remedy it; and it will be found that the well-established principles of the Constitution have been deserted for the purpose of pursuing what will turn out to be any thing but a wise or popular cause.

I have, &c.

(Signed) JOHN STRACHAN, D.D. LL.D.
John Joseph, Esq. Archdeacon of York,
Upper Canada.

(No. 1.)

Attorney General's Report respecting the erecting of Protestant Parishes.

To His Excellency Sir Robert Shore Milnes, Bart.,
Lieutenant Governor of the Province of Lower Canada.

I have been honoured with your Excellency's commands, requiring my opinion "on the legal course to be taken for erecting such Protestant Parishes as are mentioned in a report of a Committee of the whole Council upon Ecclesiastical Affairs, dated the 7th June last, as well as for establishing a Parsonage or Ecclesiastical Benefice in each Parish respectively."

The Committee in their Report have stated to your Excellency, "That from the papers accompanying the order of reference they conceive that your Excellency does not expect them to enter into the detail of a general system, but to suggest the most advisable means of forming such establishment as from the aggregate of the Protestant population in different parts of the Province and the present supply of Ministers of the Church to superintend them may be found practicable."

And to attain this desirable object, they humbly apprehend that the two preliminary requisites are, first, "the forming of such a Number of Protestant Parishes as, from the number of Protestant inhabitants dwelling in the Vicinity, shall be thought expedient; and, secondly, of a Parsonage

or Ecclesiastical Benefice in each of such Parishes."

The general question, therefore, which arises out of the report is this; what is the legal course to be taken for the Ecclesiastical Division of the Protestant See of Quebec into parishes, and for the erection of Rectories therein according to the establishment of the Church of England?"

The points which the Question involves are important, and although I have ultimately satisfied my own mind upon them, yet I submit my opinion to your Excellency's consideration with great diffidence.

By the 31st Geo. III. Chap. 31. it is enacted, "That it shall and may be lawful for His Majesty, His Heirs and Successors, to authorize the Governor or person administering the Government, with the advice of the Executive Council, to constitute and erect within every Township or Parish, which now is or may be hereafter formed, constituted, or erected, one or more Parsonage or Rectory or Parsonages or Rectories, according to the establishment of the Church of England."

The Statute and Governor's Commission have obviated every difficulty with respect to the establishment of Rectories, but the legal course to be taken for the previous erection of Parishes admits of more discussion.

On the threshold of this inquiry we meet with what, I believe, may be termed a novelty in Jurisprudence, for we are under the necessity of admitting that there are by Law Two descriptions of Parishes in Canada, to wit, Parishes with respect to the Church of England, and parishes with respect to the Church of Rome; for if we have recourse to the Law of England as it regards the Church of England (which is the Established Church of Canada,) we find that Parishes are ecclesiastical and necessary divisions of every Bishopric, and therefore the Report has stated "the Formation of Protestant Parishes" to be a preliminary requisite to the erection of Rectories. On the other hand, although the Church of England be the Established Church of Canada, yet by the Fifth Section of the Act 14th Geo. III. Chap. 83. it is declared, "That His Majesty's Roman Catholic subjects may hold and enjoy the free exercise of the Religion of the Church of Rome, and that the Clergy of the Church of Rome may hold, receive and enjoy their accustomed Dues and Rights," by which means the division of the Province into Parishes with respect to the Church of Rome has become equally necessary, for without this division "the Dues and Rights of the Clergy" can never be legally ascertained, either with respect to the Persons from whom, or the Priests by whom, they are claimed.

The Report (admitting two descriptions of Parishes) has stated the necessity of "co-extensive and identical Boundaries," and as much civil matter may be hereafter engrafted upon parishes, although ecclesiastical divisions of the Province, this necessity is very apparent; but to ensure identical Boundaries it is equally necessary that pa-

ishes relative to both Churches should be erected by authority common to both.

Your Excellency's reference has required my opinion upon the legal course to be taken for the erection of Protestant Parishes only, and to these therefore I confine myself; and, in my apprehension these may be in Canada legally erected by the sole authority of His Majesty.

According to the Law of England, which is the law of the Established Church of England, a Parish is defined to be "that Circuit of Ground which is committed to the charge of one Parson or Vicar or other Minister having Cure of Souls therein," and is declared to be not a civil but an ecclesiastical division.

By Letters Patent (under the Great Seal of Great Britain, dated the 13th day of August in the Year 1787,) His Majesty was pleased to erect the Province of Nova Scotia into a Bishop's See, and to grant unto the Bishop of Nova Scotia full power to exercise Jurisdiction, Spiritual and Ecclesiastical, in the then Province of Quebec, since divided into the Provinces of Upper and Lower Canada; and afterwards, by other letters patent under the Great Seal of Great Britain, dated the 28th day of June 1793, His Majesty was further pleased to revoke so much of the letters patent by which the Bishopric of Nova Scotia was erected as related to the Province of Quebec, and in like manner to erect the Provinces of Upper and Lower Canada and their dependencies into a Bishop's See to be called from thenceforth the Bishopric of Quebec. Thus His Majesty, by his sole authority has made an ecclesiastical division of his North American Dominions into Two Dioceses; and that he had a right so to do has been declared by the Parliament of Great Britain in the Fortieth Section of the Statute 31st Geo. III. Chap. 31., which subjects the Incumbents of Rectories in Upper and Lower Canada "to the Jurisdiction and authority lawfully granted to the Bishop of Nova Scotia by His Majesty's Royal Letters Patent, or which might thereafter by His Majesty's Royal Authority be lawfully granted or appointed to be administered within the said Provinces or either of them respectively by the same Bishop of Nova Scotia, or by any other person or persons."

Upon the general principles, and according to the Law Maxim "non debet cui plus licet quod minus est non licere," that power which was sufficient for the greater ecclesiastical division of a Country into Two Dioceses by the erection of Two Bishoprics must also be sufficient for the lesser ecclesiastical division of the same dioceses by the erection of parishes, for Bishoprics and parishes were equally ecclesiastical divisions, and the latter of far inferior consequence.

The Kingdom of England, in reference to civil matters, was originally divided into Vills and Parishes, which were, as above stated, divisions only in reference to ecclesiastical affairs. The common Law even took no notice of them, insomuch that a fine was not admitted of Lands in a Parish. But in process of time parishes were noticed by seve-

ral Acts of Parliament in reference to civil matters, particularly the maintenance and settlement of the Poor.

The division of the dioceses of England in parishes cannot be ascribed to any one Act, nor indeed to any one single age. The most ordinary method, however of augmenting the number of Parish Churches depended on the piety of the Thanes or Great Lords, who, having large fees and territories in the country, founded churches for the service of their families and tenants within their dominions. It was this that gave a primary title to the patronage of laymen, and made the bounds of a parish commensurate with the extent of a manor.

It may be doubted whether in England His Majesty possessed the right of erecting parishes when they were noticed by Acts of Parliament in reference to civil matters, and when the creation of a parish subjected the inhabitants to assessments and other impositions for various civil purposes; but before this was the case it appears certain that His Majesty, as supreme Lord, had the right of founding a Church in any extra-parochial place and of erecting it, or any part of it, into a Parish.

I infer this from an ancient record of the case of the Prior of Carlisle and Bishop of Carlisle, decided in the eighteenth year of the Reign of Edward the First, in which it was determined that the Tithes of Lands within a forest which is called any Parish belong to the King, for the following reason assigned, which has reference to His Majesty:—"Quia in foresta praedicta villas edificare ecclesias construere terras assartare et ecclesias illas cum decimis terrarum illarum pro voluntate sua cuicumque voluerit conferre potest eo quod foresta illa non est infra limites alicujus parochie."

To found a church (which of itself implies the rights of Tithes, Marriage, Baptism, and Sepulture within certain fixed limits,) and to assign to the Church a certain Territory charged with the payment of Tithes for its support, was the effect of the erection of a parish; and if His Majesty at any time previous to the Conquest possessed the right of erecting a Parish in an extra-parochial place, he humbly conceives he must yet possess it with respect to this Province (whatever the Law of England may be) for I know of no Law extended to Canada by which the exercise of this prerogative has been limited.

It may, however, be supposed, since all Forests were parts of the King's Domain, that the King had the right of erecting a Forest or part of a Forest into a Parish, because he there possessed the right of founding a Parish in common with the Thanes, each of whom held the same power in his own manor. But even in this view of the decision and rejecting the only reason assigned for it in the record, viz: "quod foresta illa non est infra limites alicujus parochiae," the case yet clearly warrants this construction, "that His Majesty held in common with his superior vassals the right of founding Churches on his own domain and that whereon he possessed the right of found-

ing a Church there he might lawfully create a parish." And since by the thirty-eighth section of the Act 31st, Geo. 3, chap. 31, His Majesty, with the advice of his Executive Council, may found a Church according to the establishment of the Church of England in any part of Canada, it follows, even upon this principle, that in any part of Canada with the same advice he may create a Protestant Parish. A Parson or Rector, according to the establishment of the Church of England, is one that hath full possession of all the rights of a Parish Church; and a Parsonage or Rectory consists of the glebe, tithes and oblations which are established for the support of a Parson or Rector," or, in other words, for the support of an incumbent of a Parochial Church. There cannot therefore be a Rectory or Parsonage, nor a Parson or Rector of a Church, that is not "parochial," and there cannot be a Parochial Church without a parish; and, consequently, whoever possesses the power of converting an extra-parochial place into a Parsonage or Rectory, and of creating a Parson or Rector to enjoy it, must also necessarily possess the incidental right of erecting that extra-parochial place into a Parish; for without that there can be no such power, the previous erection of such extra-parochial place into a Parish being indispensably necessary for the establishment of the Rectory,—the very means by which it must be created.

By the thirty-eighth section of the Act 31st, Geo. 3, chap. 31, His Majesty is empowered "to constitute and erect within every Township or parish which then existed or which thereafter might be formed, constituted, or erected within the province, one or more Parsonage or Rectory, or Parsonages or Rectories, according to the establishment of the Church of England."

His Majesty, therefore, by this section is possessed of the power of converting any Township in Canada into a Parsonage or Rectory, and by the thirty-ninth section of the same Act of creating a Parson or Rector to hold it, and since every Township is extra-parochial he must necessarily also for the reasons above assigned possess the identical right of erecting any Township in Canada into a Protestant Parish.

With respect also to the Roman Catholic Parishes which existed at the time of passing the above Act of 31, Geo. 3, which indeed were the only Parishes then in existence, the reasoning applies, all of them, in reference to the Church of England and to the Protestant See of Quebec, being equally extra-parochial. For as Parishes in England are Ecclesiastical Divisions of Dioceses according to the establishment of the Church of England, so Protestant Parishes in Canada must be the Ecclesiastical Divisions of the Protestant See of Quebec according to the same establishment; and this the Roman Catholic Parishes which existed at the time of passing the above Act of 31, Geo. 3, cannot be, because they were created and existed long before the erection of the Protestant See of Quebec, and consequently without any reference to it, and because they were

erected by the • Authority of the Pope, whose power the Church of England can in no way recognise. And such being the case the report of the Council has stated to your Excellency that in all instances wherever a Protestant Rectory is to be established it will be necessary previously to create a Protestant Parish, even in the Roman Catholic Parishes of Quebec, Montreal, Three Rivers, and William Henry, with co-extensive or rather identical boundaries, although those Parishes have existed as such since the year 1722.

Since, therefore, His Majesty by the above-cited sections of the Act of the 31st, Geo. 3, chap. 31, is possessed also of the power of converting any Roman Catholic Parish which existed at the time of passing that Act (and now have been since erected,) into a Protestant Rectory, and to create a Rector to hold it, and since every such Parish, with respect to the Church of England and the Protestant See of Quebec, is extra-parochial, he must also, for the reasons above assigned, necessarily possess the identical right of erecting any Roman Catholic Parish now existing in Canada into a Protestant Parish and Ecclesiastical Division of the Protestant See of Quebec, according to the establishment of the Church of England.

I shall add, that in strict conformity to the principles which I have had the honour of submitting to your Excellency's consideration, His Majesty, by His Royal Commission, has been pleased of his sole authority to authorise and empower the Governor, Lieutenant Governor, or person administering the Government of this province, with the advice of the Executive Council, to form, constitute, and erect either Townships or Parishes within the province, and within every Township or Parish to constitute and erect one or more Parsonage or Rectory, or Parsonages or Rectories, according to the establishment of the Church of England.

For the reasons I have detailed, I am of opinion that in your Excellency is vested the power of erecting, with the advice of His Majesty's Executive Council, such Protestant Parishes as are mentioned in the report referred, and that the legal course to be taken for the Ecclesiastical Division of the See of Quebec into Parishes, and for the erection of Parsonages or Rectories therein, according to the establishment of the Church of England, is by letters patent under the great seal of this Province.

(Signed)

J. SEWELL,

Attorney General.

•Quebec, 6th June, 1801.

(No. 2.)

Province of Lower Canada:

RICHMOND, LENOX, AND AUBIGNY. (L.S.)

George the Third, by the Grace of God of the United Kingdom of Great Britain and Ireland

* The division was in the first instance made by Ecclesiastical authority, the Bishop acting concurrently with the civil Government of the Province, and their proceedings were confirmed by an Arrêt or Decree of the King of France in 1722.

King Defender of the Faith; to all whom these present Letters shall concern, greeting:

Whereas by Letters Patent under our Great Seal of Great Britain, bearing date the twenty-eighth day of June in the thirty-first year of our Reign, we did erect, found, ordain, make, and constitute our Provinces of Lower Canada and Upper Canada, and their dependencies, to be a Bishop's See, to be called from thenceforth the Bishopric of Quebec; and whereas by a certain Statute or Act of the Parliament of Great Britain passed in the thirty-first year of our Reign, intitled "An Act to repeal certain parts of an Act passed in the fourteenth year of our Reign, intitled 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,'" sundry provisions were made respecting the allotment and appropriation of land for the maintenance and support of a Protestant Clergy within our said Provinces; and it was among other things more especially enacted, that it should and might be lawful for Us, our Heirs or Successors, to authorize the Governor or Lieutenant Governor of each of our said Provinces respectively, or the person administering the Government therein for the time being, from time to time, with the advice of our Executive Council of our said Provinces respectively, to constitute and erect within every Township or Parish which then was or thereafter might be formed, constituted, or erected within such Province, one or more Parsonage or Rectory, or Parsonages or Rectories, according to the establishment of the Church of England; and from time to time, by an instrument under the Great Seal of such Province, to endow every such Parsonage or Rectory with so much or such part of the lands so allotted and appropriated as aforesaid, in respect of any lands within such Township or Parish, which should have been granted subsequent to the commencement of the said Act, or of such lands as might have been allotted and appropriated for the same purpose by or in virtue of any instruction which might be given by us in respect of any lands granted by us before the commencement of the said Act, as such Governor or Lieutenant Governor, or person administering the Government, should, with the advice of the said Executive Council, judge to be expedient under the then existing circumstances of such Township or Parish.

And whereas the doctrine and discipline of the Church of England, being professed and observed by a very considerable part of our loving subjects resident in the Parish of Montreal in the District of Montreal, in our said Province of Lower Canada, our trusty and well beloved Sir John Coape and Knight Grand Cross of the Most Honourable Military Order of the Bath, our Governor General of and for our said Province of Lower Canada, hath, with the advice of our Executive Council of our said Province, judged it to be expedient to constitute and erect a Parsonage or Rectory within the said Parish of Montreal, according to the establishment of the Church of

England; and, with the advice of the said Executive Council, hath also judged it to be expedient under the now existing circumstances of the said Parish of Montreal, to endow the said Parsonage or Rectory with the Church Lands and immovable estate hereinafter particularly set forth and described.

Now therefore know ye, that our said trusty and well beloved Sir John Coape Sherbrooke, Knight, our said Governor, being thereunto, by us duly authorized, pursuant to the aforesaid Statute, hath, and by these our Letters Patent, with the advice of our Executive Council of our said Province, doth ordain, make, constitute, and declare all that precinct included within the bounds and limits of the aforesaid Parish of Montreal, as described in a certain reglement of the Sieur Vaudreuil, Governor and Lieutenant Governor of New France, the Sieur Eveque de Quebec, and the Sieur Begou, intendant, bearing date the twentieth day of September in the year of our Lord Christ One thousand seven hundred and twenty-one, confirmed and homologated by an Arrêt of His most Christian Majesty in His Council d'Etat, bearing date the third day of March in the year of our Lord Christ One thousand seven hundred and twenty-two, is and shall be henceforth for ever an ecclesiastical division and parish of the aforesaid Bishopric of Quebec, and be called by the name of "The Parish of Montreal." And within the said parish our said Governor, being also thereunto by us duly authorised pursuant to the aforesaid Statute, hath constituted and erected, and by these our Letters Patent, with the advice of our said Executive Council, doth constitute and erect one Parsonage or Rectory, according to the establishment of the Church of England, to be called from henceforth the Parsonage or Rectory of the Parish Church of Montreal: and hath and doth ordain, make, constitute, and declare the precinct contained within the limits and bounds of the said Parish of Montreal to be the precinct of the said Parsonage or Rectory of the Parish Church of Montreal; and having great confidence in the learning, piety, morals, Probity and prudence of John Leeds, Clerk, a Minister of the Church of England, duly ordained according to the Rites of the said Church, our trusty and well beloved Sir John Coape Sherbrooke, Knight, our said Governor, being also thereunto by us duly authorized pursuant to the aforesaid Statute, hath nominated, presented, and collated and by these our Letters Patent doth nominate, present, and collate, the said John Leeds to the said Parsonage or Rectory and Parish Church of Montreal, and to be the Incumbent thereof, and to have, hold, and enjoy the same, and all rights, profits, and emoluments thereunto belonging or granted, as fully and amply, and in the same manner and on the same terms and conditions, and liable to the performance of the same duties, as the Incumbent of a Parsonage or Rectory during our Royal pleasure and the actual residence of the said John Leeds in the said Parish of Montreal. And, to the end that all matters and things

aforesaid may have their due effect, We, by these our Letters Patent, do signify unto the Right Reverend Father in God, Jacob Lord Bishop of Quebec that we, in manner aforesaid, have ordained, made constituted, and declared the aforesaid Parish of Montreal to be an ecclesiastical division and Parish of the aforesaid Bishopric of Quebec, and have erected and constituted within the said Parish the aforesaid Parsonage or Rectory, and do present unto him, the said Jacob Lord Bishop of Quebec, the said John Leeds, requiring, and by the Faith and Life by which he is bound to us commanding him, to admit the said John Leeds to the said Parsonage or Rectory and Parish Church of Montreal, and cause him to be instituted and inducted into the same with all its rights, members, and appurtenances, and to do and execute all other things in this behalf which shall belong to his episcopal office.

And we do hereby will and grant, that the Rector of the said Parsonage or Rectory and Parish Church of Montreal, and his Successors Rectors of the said Parsonage or Rectory and Parish Church, be, and shall continue a Body Corporate with perpetual succession, by the name of the Rector of the Parsonage or Rectory and Parish Church of Montreal.

And we do further will and grant that he and his successors, by the name aforesaid, shall be able and capable in the law and have full power to purchase, have, take, hold, and enjoy such messuages, lands, rents, Tenements, annuities, hereditaments, heritages, and real estates, of what nature and kind soever, in fee and in perpetuity, for term of life and years, as by grant or license under the Great Seal of our said Province he or they shall at any time be authorised to take, hold and enjoy; and also all manner of Goods, chattels, and things personal whatsoever of what nature or value soever; and also to determine any of the said Messuages, lands, tenements, hereditaments, heritages, and real estates whereof or wherein he or they shall have any estate or interest as aforesaid, in such manner as by license under the Great Seal of our said Province he or they shall at any time be authorized for that purpose; and that he and his successors, by and under the same name, may prosecute, claim, plead and be impleaded, defend and be defended, answer and be answered, in all manner of Courts, of Us, our Heirs and Successors, and elsewhere, in and upon all and singular causes, suits, writs, and demands, personal and mixed, and in all other things, causes, and matters whatsoever.

And moreover, We will and ordain by these presents, that the said John Leeds, Rector of the said Parsonage or Rectory and Parish Church, shall be subject to the Authority and Jurisdiction of the Right Reverend Father in God, Jacob Lord Bishop of Quebec, and his successors Bishops of the Bishopric of Quebec, in the same manner as any Rector of any Parsonage or Rectory or Parish Church within that part of Great Britain called England is under the Authority and Jurisdiction of the Bishop of the

Diocese within which such Parsonage or Rectory or Parish Church is situated. And know ye further, that our said trusty and well-beloved Sir John Coape Sherbrooke, Knight, our Governor as aforesaid, being thereunto also by us duly authorized pursuant to the aforesaid Statute, hath, with the advice of our said Executive Council, allotted and appropriated, ordained, made, constituted, appointed, and declared, and by these our Letters Patent doth allot and appropriate, ordain, make, constitute, appoint, and declare, the Church erected in Notre Dame Street in our said City of Montreal, in the said Parish of Montreal, to be the Parochial or Parish Church of the said Parish of Montreal: and the said Parsonage or Rectory of the said Parish Church of Montreal, with the said Church, hath, and by these our Letters Patent doth endow, and the Freehold and Inheritance of the said Church and of all the Appurtenances thereunto belonging hath, and by these our Letters Patent doth give, grant, and vest for ever in the said John Leeds, Rector of the said Parsonage or Rectory and Parish Church of Montreal, and his Successors Rectors of the said Parsonage or Rectory and Parish Church; and the same Church is hereby declared to be for ever dedicated to the Service of God, to be therein more especially applied to the use and Behoof of our loving subjects professing the Doctrine and Discipline of the Church of England, now inhabiting, and from time to time hereafter to inhabit, the said Parish of Montreal.

And know ye, that our said trusty and well-beloved Sir John Coape Sherbrooke, our said Governor, being thereunto by us duly authorized pursuant to the aforesaid Statute, hath, and by these our Letters Patent doth, with the advice of our said Executive Council, endow the said Parsonage or Rectory of the Parish Church of Montreal with all, each, and every the Tracts, Lots, Pieces, and Parcels of Land herein-after described; that is to say, first, with all that Piece or Parcel of Land situate, lying, and being in Notre Dame Street in the City of Montreal, measuring upon the said Street one hundred and nine feet two inches, and upon which said Parish Church is built; and the Freehold and Inheritance of the said Lot, Piece and Parcel of Land, and all the Appurtenances thereunto belonging, hath, and by these our Letters Patent do give, grant, and vest for ever in the said John Leeds, Rector of the said Parsonage or Rectory and Parish Church of Montreal, and his Successors Rectors of the said Parsonage or Rectory and Parish Church.

In testimony whereof, We have caused these our Letters to be made Patent, and the Great Seal of our said Province to be hereunto affixed. Witness our trusty and well-beloved his Grace Charles Duke of Richmond, Knight of the most Noble Order of the Garter, Captain General and Governor in Chief in and over our Province of Lower Canada, Vice Admiral of the same, &c. &c. &c., at our Castle of Saint Lewis in our City

of Quebec, in our said Province of Lower Canada, the twelfth day of August, in the year of our Lord one thousand eight hundred and eighteen, and in the fifty-eighth year of our Reign.

RICHMOND, LENOX, AND AUBIGNY.

John Taylor,

Deputy Secretary.

(No. 3.)

At the Council Chamber at York, on Thursday the 9th day of March, 1815.

Present:—The Honourable Thomas Scott, Chief Justice, Chairman; the Honourable James Baby, the Honourable John McGill, the Honourable Mr. Justice Powell.

To His Honour Gordon Drummond, Esquire, President, administering the Government of the Province of Upper Canada, and Lieutenant General commanding His Majesty's Forces therein, &c., &c., &c.

May it please your Honour,

The Committee of the Executive Council to which was referred by your Honour the Petition of the Reverend Doctor Strachan for remuneration for monies expended on the Parsonage House at Cornwall for the residence of the Minister of the Church of England has bestowed due attention on the subject, and considers the prayer of the petition reasonable and just.

The latter part of the reference, to advise from what fund compensation can be made, has also undergone the serious consideration of the Committee. In its deliberation on this subject the Committee was naturally led to review the relative situation of the Ministers of the Church here and in England. They find that the Rector of a Church in England has a fee in his Rectory, which is endowed in such a manner as to insure a permanent Revenue during the Incumbent's life; that provision is made by Statute in England to subject that Revenue to the charge of building and repairing the house of the Parsonage or Rectory: That in this country the Church is not actually endowed, nor has the Minister a fee or any security in his incumbency, which, as well as his Revenue, is at the will of the Crown: That no provision therefore can be made out of that Revenue for building or repairing the Parsonage House: That it is contemplated by the Canada Bill to endow the several Rectories hereafter to be constituted out of the lands reserved for the support of a Protestant Clergy at the discretion of the Governor and Executive Council of the Province, or as the Legislature, under certain limitations, may ordain: That in the meantime the lands reserved for the support of a Protestant Clergy are leased, and the rents thereof may be applicable to such support at the discretion of the Executive Government. It is from that fund only that the Committee can discover any source for providing a decent residence for the Clergy. In analogy to the provisions of the seventeenth of His present Majesty, the Committee apprehends it may be expedient to adopt some rule

which shall govern all applications of this nature until legislative provision shall be made on this subject. The Committee is of opinion that when ever a Church is erected, and a Minister appointed to reside, in any Township, the Wardens may be authorized to erect a Parsonage House, by anticipating the produce of the Clergy Reserve in the Township by loan of a sum not exceeding pounds, the principal and interest of which loan shall be paid by such person as may be charged with the receipt of the Clergy rent within the Township as they may become productive; that the charge of insurance and ordinary tenant's repairs shall be defrayed by the Incumbent, and all other repairs by such means as the building.

Upon this principle the Committee humbly submit to your Honour, for the approbation of His Royal Highness the Prince Regent, that the Reverend Doctor John Strachan may be entitled to receive from the rents of the Clergy Reserve in respect of the lands in the Township of Cornwall, the principal and interest of his advance towards the erection of the Parsonage House in Cornwall, conformable to the certificates of the Magistrates and Churchwardens, the sum of £340 with interest at the rate of six per cent from until paid.

All which is humbly submitted.

(Signed) THOS. SCOTT,
Chairman.

(No. 4.)

Castle of St. Lewis, Quebec,
23d March, 1816.

SIR,—I avail myself of the present opportunity of forwarding to your Excellency the extract of a despatch addressed to me by the Earl Bathurst in reply to a communication I made to his Lordship, submitting the petition of the Reverend Dr. Strachan to his favourable consideration.

I have, &c.,

(Signed) GORDON DRUMMOND.

His Excellency Lieutenant Governor Gore,
&c., &c., &c.

Extract of a Despatch from the Earl Bathurst addressed to His Excellency Sir Gordon Drummond, 10th October, 1815.

"The claim of the Reverend Dr. Strachan, the present Minister of York, appears from the report of the Council to be deserving of consideration and you will therefore consider yourself authorized to make the payment which they have recommended."

(Signed) BATHURST.

[Nos. 5, 7, and 8, are omitted here, being duplicates of three documents already published, viz.:—Lord Bathurst's Despatch to President Smith, 2d April, 1818; Lord Bathurst's Despatch to Sir P. Maitland, of 22nd July, 1825; and the Report of the Executive Council of Upper Canada, to Sir P. Maitland, of 21st November, 1825.]—pp. 10 & 11.

(No. 6.)

APPENDIX B.

An Act relative to the Right of Tithes within this Province. (Passed by the Legislature of Upper Canada.)

The Royal Assent to this Bill was promulgated by Proclamation bearing date the 20th day of February 1823.]

Whereas notwithstanding His Majesty has been graciously pleased to reserve for the support of a Protestant Clergy in this Province one seventh of all lands granted therein, doubts have been suggested that the tithes of the produce of land might still be legally demanded by the Incumbent duly instituted or Rector of any Parish, which doubt it is important to the well doing of this Colony to remove; be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled 'An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,' " and by the authority of the same, That no tithes shall be claimed, demanded or received by any ecclesiastical person, Rector, or Vicar of the Protestant Church within this Province; any law, custom, or usage to the contrary notwithstanding.

(No. 9.)

At a meeting of the Corporation for superintending, managing, and conducting the Clergy Reserves of the Province of Upper Canada, held on the 4th of February 1835.

Present.

The Honourable and Right Reverend the Lord Bishop of Quebec.

The Honourable and Venerable the Archdeacon of York.

The Reverend A. N. Bethune.

The Reverend J. MacGrath.

The Reverend J. Millar.

The Reverend R. Flood.

The Surveyor General.

The following resolutions were then proposed and unanimously adopted :

1st, Resolved, That immediate steps may be taken to appropriate as an endowment to every Mission or Parish now constituted in this Province such portion of the Clergy Reserves or Glebes within or as near to the same as may be deemed expedient, preparatory to the induction of the resident clergyman.

2d, Resolved, That for the Selection of the Lots embraced in the foregoing resolution, the clergyman contiguous be assisted by a person acting under the direction of the Surveyor General.

3d, Resolved, That a few Clergy Reserve Lots eight or ten in number, as may be considered expedient, be exempted from sale or lease in every Township in which a resident clergyman is not already stationed, in such parts of the same as may appear most convenient to form an endowment for future Parishes.

4th, Resolved, That it is expedient that a special endowment be constituted without delay for the maintenance of the episcopal office and that of the Archdeacons in this Province, and that for this purpose a Reservation of two Lots in each Township be recommended.

5th, Resolved, That it is deemed advisable by this Corporation that the leasing of the Clergy Reserves be recommenced, and that a new Table of Rents for such Reserves be established, distinguishing the annual amount to be paid by Lessees according to the value and situation of the Lots held by them.

6th, Resolved, That in carrying the former Resolution into effect, it be humbly recommended to the consideration of the Lieutenant Governor and Council, whether it would not be most expedient that the Rents to be charged in future upon the Clergy Reserves should be fixed by a moderate per-centage upon the estimated Value of such Lots.

7th, Resolved, That it be recommended that not more than one fourth of the Clergy Reserves be sold hereafter in any one Township by the Commissioner of Crown Lands, as from the Act of Geo. 4. Cap. 62, authorizing the Sale, it is reasonable to infer that the retention of three fourths of the Clergy Reserves in every Township was contemplated.

8th, Resolved, That it be recommended that no Clergy Reserves be hereafter sold under 10s. per Acre, as when they are of less value it is considered more advantageous that they should be retained for Lease.

9th, Resolved, That to ensure the regular payment of Rents due upon the Clergy Reserves it be recommended that a Commission of office should be issued, to declare the Lots of the principal Defaulters in every District vacant or open for Sale.

10th, Resolved, That it be recommended that no assistance be bestowed in future towards the erection of Parsonage Houses from the funds arising from the Clergy Reserves, unless they be built of durable Materials of Brick or Stone.

11th, Resolved, That it does not appear to this Board that the Sale of Clergy Reserves under Lease was contemplated by the Act of Geo. 4. Cap. 62., since its object was to raise a fund for the maintenance of the Clergy, which the sale of leased Lots seems in some degree to counteract.

12th, Resolved, That a humble address be presented to His Excellency the Lieutenant Governor, expressing to him the grateful sense entertained by this Corporation of the zeal and Interest which His Excellency has manifested in

the cause of the Church in this Province, and recommending to his favorable consideration the foregoing Resolutions.

(Signed) C. J. QUEBEC,
Principal.

(No. 10.)

Government House, 29th June, 1835.

The Lieutenant Governor transmits to the Executive Council the accompanying copy of a Communication addressed to the Law Officers of the Crown, and their Reports, relative to the course which it is proposed to adopt in constituting Parsonages according to the Statutes.

The Lieutenant Governor requests the Executive Council will examine the forms of instruments which the Attorney General recommends to be used in constituting and endowing Rectories and presenting Rectors, and take into consideration whether the course recommended by the Attorney General is in any respect objectionable; or whether, under all circumstances, it may not be for the interests of the Province to direct Parsonages to be constituted and endowed without further delay, and designated in the mode suggested by the Attorney General, in all Townships in which missionaries have been appointed by the Bishop of Quebec to take charge of congregations.

Government House, 8th May, 1835.

Gentlemen,—I am directed to acquaint you that before the Lieutenant Governor, with the advice of the Executive Council, can proceed to constitute and erect Parsonages or Rectories in each settled Township of the Upper Province, in conformity to the Act of the 31st Geo. 3, Cap. 31, it is necessary that the Crown Officers should state, for the information of the Lieutenant Governor and Executive Council, the precise mode by which Parsonages or Rectories can be legally constituted, and carefully draw out the form of the instrument which they may recommend to be adopted in future, when the Lieutenant Governor deems it necessary to constitute Parsonages or Rectories, to endow them, and to present Ministers. The late Attorney General made a report on these subjects, which the Lieutenant Governor has already transmitted to you.

You will perceive from the accompanying correspondence that the Bishop of Quebec hesitates to induct Mr. Coghlan, under the instrument by which he has been presented to the benefice of St. John's, at Port Hope; the Lieutenant Governor therefore requests that you will report how far the objections of the Bishop may be removed or considered valid.

The Lieutenant Governor in 1832 suggested to the Secretary of State for the Colonies that it was expedient, in making arrangements with a view of laying the foundation of the Church and insuring its prosperity, to constitute gradually a certain number of Rectories or Parsonages in every Township, without transferring to incumbents any of the exclusive rights or immunities

connected with the ecclesiastical divisions of the Established Church, which could have reference only to rights, Poor Laws, and the Ecclesiastical jurisdiction of Vicars or Rectors, and endeavour to show that the dispersed state of the population, and other circumstances, render it impracticable to constitute, advantageously, Parishes, at that such divisions could never confer the rights and privileges that are attached to Parishes in England, but might embarrass the Clergy.

The Lieutenant Governor still adheres to his former intention of constituting Rectories or Parsonages, according to the Act which has been cited, in every settled Township; a course which was sanctioned by the Secretary of State for the Colonies in 1832. Thus, assuming that there is a certain number of lots set apart in every Township for Glebes or Endowments, the next step to be taken must be to vest these Lands in the hands of Trustees for the benefit of incumbent Rectories or Parsonages, when the Rectories or Parsonages may be constituted; and so soon as a congregation be formed by a Minister, the Rectory may be designated by styling it the first or second Rectory or Church of the East or West Township; and if such course can be legally followed, the Lieutenant Governor is persuaded that the Bishop of Quebec will not refuse to proceed with the Inductions. Ministers properly qualified, on their being legally presented to him.

I have, &c.,

(Signed) WM. ROWAN.

The Crown Officers.

Government House, 26th May, 1835.

Gentlemen,—With reference to my communication of the 8th instant, and the present state of the Missions of the Church of England, and the intention of the Lieutenant Governor of erecting Parsonages immediately, with the advice of the Executive Council, in conformity to the Statutes, I am directed to call your attention to the chief objects it appears desirable to accomplish in presenting and inducting Clergymen,—the conferring the right on all the inhabitants of a Township to attend every Church that may be established in the Township in which they reside, and to secure to incumbents the appropriations which may be annexed to their respective Churches, without embarrassing them with any of the immunities and privileges which are inseparable from our Ecclesiastical Divisions at home, but inapplicable to this Province.

The Statutes declare that Parsonages are to be erected in Townships according to the Church of England; your opinion, therefore, is requested as to the legal definition of a Parsonage, and in which mode it can be best designated.

The term Parsonage in law His Excellency supposes is applied to the benefice and residence of the Parson or Persona Ecclesiæ, who will have during his life the freehold in himself of the Parsonage House, the Glebe, and Endowments attached to the Parsonage.

The Lieutenant Governor requests to be in-

formed whether Churchwardens or Guardians of the Church property, who are in England the legal Representatives of the Parish, cannot be chosen by the joint consent of the Minister and congregation, or pew-holders.

As the Parsonage in law will be considered as the appropriation of the Parson, and not as the boundaries of a Parish, or the extent of any Ecclesiastical jurisdiction, the Lieutenant Governor suggests that a Church and Parsonage might be designated sufficiently by styling it the first, second, or third Township Church.

On these points His Excellency desires to have your opinion as soon as possible.

I have, &c.,

(Signed)

WM. ROWAN.

The Crown Officers.

Solicitor General's Office,

Toronto, 4th June, 1835.

Sir,—With reference to your communication of the 8th and 26th May last, containing the commands of the Lieutenant Governor, that I should report my opinion on the points referred to therein, relating to the intention of His Excellency to erect Parsonages and Rectories within the Province, I have the honour to state that the Act of the British Parliament, from which authority to act on this important subject is derived, requires,—

1st. That the limits of all Parsonages or Rectories created should be defined :

2nd. That, when defined, a Minister duly ordained according to the establishment of the Church of England should be presented for Induction ; the patronage being in all cases in the Crown.

3rd. That such Parsonage or Rectory should be endowed with such portion of the Lands reserved for the support of the Established Church as His Majesty's Government should think sufficient for the proper maintenance of the Minister : and upon these several heads I beg leave to offer the following observations :—

Upon the first point, I am of opinion that it is necessary that the limits of all Parsonages or Rectories should be defined : first, because when declared and established, they are intended to constitute the Ecclesiastical Divisions of the Province, in the same manner that Parishes constitute these divisions in England ; second, because the Minister being appointed to the Cure of souls within his Parsonage or Rectory, and as no duties can be legally required of him beyond its limits, it is obvious that it must contain such a number of inhabitants as will constitute a congregation ; and, third, because Churchwardens must be elected annually by and from among the members of the Church residing within the boundaries of the Parsonage or Rectory, and cannot be elected from among any other class of persons. And it may be necessary to remark, with reference to Churchwardens, that they should be legally appointed ; and that when so elected they become vested with the control

of the moveable effects belonging to the Church, have the power of regulating and settling fees and pew rents, and generally are placed in the management of all matters relating to Church property and funds, with the exception of the landed endowments and other real estate held by the incumbent and derived from the Crown.

Upon the second point I beg to remark, that the Minister, when inducted, becomes vested with all the rights which belong to a Parson or Rector of a Parish in England, and is in like manner subject to all the duties and responsibilities which in that country attach to the Incumbent of a Living there. With respect to the rights of a Parson or Rector, they are few even in England, and are still less in number in this country. Here there are no tithes, no exclusive right to marry or to keep registries of marriage, births, christenings or burials ; no claims to fees, privileges, or immunities of any kind, arising from usage or prescription. In this country, as in England, the Parson or Rector, when inducted, becomes a corporation sole, and as such he is invested with all the real estate with which the Parsonage or Rectory is endowed, and control over these (which are the only rights that exclusively belong to him) he alone can exercise, be the limits of his Parsonage great or small ; on the other hand, every duty that is imposed on an Incumbent of a Living in England attaches to him here, and he is responsible to the civil or ecclesiastical power for their due performance. The apprehension therefore that has been entertained (by myself as well as others,) that by extending the limits of a Parsonage or Rectory, a power would be given to the Minister that might be improperly used, and therefore lead to inconvenient consequences, is, upon examination, found to be without grounds ; on the contrary, in proportion as the limits of the Parsonage or Rectory are extended, the duties and responsibilities of the Incumbent are increased, and the control of the congregation over him strengthened, while he gains no additional advantage whatever to himself. The laws do not prescribe the number of inhabitants a Parsonage or Rectory should contain before the Bishop is authorized to induct a Minister to the cure of souls within its limits, and therefore this must, to a certain degree, be left to his discretion ; but the creating a Parsonage or a Rectory, without assigning boundaries, would, in my opinion, be void, and therefore without this being done neither presentation nor induction could legally take place.

Upon the last point it is unnecessary for me to make any further observation than that a form of patent should be framed conformably to law, for endowing Parsonages or Rectories with such lands as His Majesty's Government may deem sufficient for the respectable support of the Incumbent.

All which is nevertheless respectfully submitted.

I have, &c.

(Signed)

CH. A. HAGERMAN,

Solicitor General.

Attorney General's Office,
13th June, 1835.

Sir,—I have the honour to request that you will submit to the consideration of his Excellency the Lieutenant Governor the proposed forms of two instruments drawn by his Excellency's command.

1. An Instrument under the Great Seal for the constituting and erecting of a Parsonage or Rectory within any particular Township according to the authority given to His Majesty by the Statute 31 Geo. III, c. 31, s. 38.

2. Letters missive, also under the Great Seal, directed to the Lord Bishop of Quebec, requiring the institution and induction of the Clergyman whom his Excellency, under the thirty-ninth section of the same Act, may present to the Parsonage or Rectory so constituted. The contemporaneous endowment of the land appropriated by the other instrument may be made by an ordinary grant to the Incumbent and his successors. On all future presentations the legal title to the temporalities will vest by the act of institution and induction.

The great respect due to the opinion of the Solicitor General has led me to frequent reconsiderations of my advice, that his Excellency, under the Imperial Act above recited, might erect and constitute these Parsonages, and endow them, without assigning any territorial limits for the spiritual jurisdiction and operations of the Parson, in the nature of a Parish; and I cannot divest myself of the opinion that the Parsonage may be so constituted, and may consist of the Parson, with the Church, &c., and the endowment. Parish, in its technical sense, having relation to Tithes, Church Rates, &c., undoubtedly requires ascertained limits; the word, however, is not used in the Act except as a mere civil subdivision of the Province, and synonymously with Township; for it authorizes the erection and constitution of one or more Rectory or Parsonage or Rectories or Parsonages within every Township or Parish. Neither do I think the words Parsonage and Rectory are used with any reference to a particular jurisdiction as contradistinguished from Vicarage or Stipendiary Priesthood, but simply as *Benefice*, which is the largest term applied to Church Livings, and means the Beneficia or Endowment: and I think the Parson or Corporation sole, together with the Church and Benefice or temporal Endowment, will amount to a Parsonage within the meaning of the Act. Had the Act, while authorising the erection and constitution of Parsonages within each Township, used any words implying a division of the Township, some doubt might be entertained which the Act does not now raise. The difficulty of making territorial divisions now which would meet the state of population hereafter, together with the inapplicability from the absence of Tithes and Church Rates, the Beneficia consisting entirely of land or the proceeds of land, combined with the probable impolicy of appearing to create Parishes where there is no spiritual jurisdiction,

or Cure of Souls, in the ancient sense of the words, where in fact the Clergyman's Parish consists of his voluntary flock and congregation, impress me with the opinion that, unless the law had in terms required such a specific division and appropriation of a particular part of each Township to each endowment, the contrary system is the most expedient.

As to the appointment of Churchwardens, the provision in the 33 Geo. III, c. 2, s. 7, respecting them having been repealed by the recent Act consolidating and altering the laws relating to Township Officers, in which no mention whatever is made of Churchwardens, and as there are here no payers of Church Rates, I am not at this moment prepared to say how they could be legally appointed; but I do not think that any present uncertainty upon that matter could delay his Excellency in the important duty of erecting and constituting Parsonages and appropriating the Endowments.

I have, &c.,
(Signed) ROBERT S. JAMESON.
Lieutenant Colonel Rowan.

In Council, 5th November, 1835.

The Council concur with the herein-expressed opinion of the Attorney General, and recommend that no time should be lost in erecting and constituting Parsonages and appropriating the endowments in the manner within-mentioned.

(Signed) PETER ROBINSON, P. C.
(Signed) J. C.

No. 9.

(No. 4.)

Copy of a Despatch from Lord Glenelg to Major General Sir George Arthur, K.C.H., Lieutenant Governor of Upper Canada.

Downing Street,
26th December, 1837.

Sir,—Amongst the questions to which your attention will be called upon your arrival in Upper Canada, one of the most important is that which relates to the provision for the maintenance and diffusion of Christian knowledge throughout the increasing population of the Province.

This subject has recently engaged much of the public attention in Upper Canada, with reference to the recent beneficial appropriation of the Lands set apart by the Act of 1791 for religious purposes, and known by the name of Clergy Reserves. It could scarcely be expected that the discussion of this question could fail to produce considerable controversy and excitement, or that its settlement could be accomplished without serious difficulty. I entertain, however, a confident hope that some plan may at an early period be agreed to, by which the difficulties which have hitherto opposed a satisfactory adjustment of the conflicting claims of various religious denominations may be removed, and an adequate provision be made for meeting, on comprehensive principles, the religious wants of the great body of the inhabitants.

I regret that the agitated question of the endowment of fifty-seven Rectories in the commencement of the year 1836 has introduced a new element of dissension. The correspondence which has taken place between Her Majesty's Government and your predecessor on this subject, will place you fully in possession of the facts of his case. How far the view originally taken of that subject by the Law Officers of the Crown, may be altered when they shall have maturely considered the explanations which have recently or the first time reached me, as to the grounds on which the Lieutenant Governor and Executive Council really proceeded, I am at present unable to state. In the meantime, however, before I can receive their Report, I think it right to acquaint you with the view which I at present entertain of the course which it may be desirable to pursue with reference to this subject.

The House of Assembly of Upper Canada, as appears from their Journals of the 9th February, 1837, adopted a series of Resolutions relative to these Endowments, of which the sixth declared, "That this House regards as inviolable the rights acquired under the patents by which Rectories have been endowed, and cannot, therefore, either invite or sanction any interference with the rights thus established." On the part of Her Majesty's Executive Government, I cannot hesitate to avow our entire adoption of the principle by which this resolution was dictated. Although the Endowments of the Rectories in the year 1836 did not take place with the previous concurrence or knowledge of the present Ministers of the Crown, yet, as they appear to have been made at least under a presumed authority from the Secretary of State, and as considerable time has now elapsed since the parties were put in possession of the Lands, I should much regret to be compelled to disturb that settlement, or to dispossess the Clergy of the Church of England of the lands which have been assigned for their maintenance.

Should the legal right now appear to the Law Officers of the Crown to be indefeasible, no practical question will, of course, remain for the decision of the Government; but, even on the contrary supposition, I feel that, with the concurrence of the Local Legislature, the Endowments which have actually been made might be ratified in connexion with some general scheme for the future appropriation of the Clergy Reserves, which would satisfy the reasonable claims of the various denominations of Christians. As a basis of such a settlement I would propose that, under the peculiar circumstances of the case, the right of the Church of England to the Endowments of January, 1836, should be acknowledged and ratified. I would further suggest that this measure should be accompanied by a Legislative declaration that the establishment and endowment of Rectories in the Province shall not be construed to confer any right to exercise any Ecclesiastical or Spiritual power whatever, "except over the members of the Church of England." I quote

these words from the Resolutions of the Assembly of the 9th of February, 1837, to which I have already referred. That House, indeed, proposes that this declaration should proceed, not from the Local Legislature, but from Parliament. But I conceive that, if the arrangement I suggest should meet with general acceptance, there will be no difficulty in obtaining an Act of general Assembly for the purpose, and that the interference of Parliament in the internal affairs of the Province may thus be avoided.

In the next place, I have to refer you to my Despatch to Sir F. Head of the 7th of September, No. 231, in which, and in the enclosures accompanying it, will be found an explanation of the system established on my advice by His late Majesty for providing for the religious instruction of the inhabitants of the Australian Colonies. I do not here enter into the details of that measure, with which you are already familiar, but I confine myself to the statement that the general principle of it is, that the contributions of the State towards the support of the different Christian communions should be regulated by the extent of the voluntary efforts which the Members of each should make for the promotion of the same general end. Of the success of that plan in New South Wales I have the most satisfactory proofs. The result in that Colony, even during the short period which has elapsed since the provisions of this measure have been in operation, has been greatly to increase the spontaneous exertions of the various denominations of Christians, the number of Ministers, and the means applicable to the general diffusion of Christian instruction. If the Clergy Reserves of Upper Canada should be converted into a fund subject to a similar appropriation, I perceive no reason to doubt of a corresponding result. If, by the adoption of this scheme, with any modifications which the knowledge possessed by the Local Legislature of the circumstances of the Province, and the comparative numbers of the religious denominations existing in it, may suggest, concord and a mutual good understanding could be restored amongst the different Christian societies existing in Upper Canada, an object of the highest importance would be attained. We should have closed a controversy hostile to the general peace of Her Majesty's subjects inhabiting that part of Her dominions, and should have brought to an end a debate painful to every one who is justly alive to the interests of the Christian faith, which we all acknowledge and profess under various forms of Ecclesiastical Government.

You are, therefore, authorized to convey these or any other suggestions which you consider better adapted to effect the object in view, to the Legislative Council and House of Assembly, in whatever manner may be most consistent with constitutional forms and with a careful respect for their rights and privileges; and I earnestly hope that they will cordially co-operate with Her Majesty's Government and with yourself in the adoption of such measures, with reference to this

important subject, as will most effectually conduce to the advancement of the best interests of all classes of Her Majesty's subjects in the Province.

(Signed) I have, &c., GLENELG.

No. 10.

(No. 20.)

Copy of a Despatch from Lord Glenelg to Major General Sir George Arthur, K. C. H., Lieutenant Governor of Upper Canada.

Downing Street,
9th February, 1838.

Sir,—Referring to the Despatches enumerated in the margin on the subject of the Rectories established in Upper Canada, under an order made by Lieutenant Governor Sir John Colborne with the advice of the Executive Council, in the year 1836, I have now the honour to transmit for your information a copy of a further report which has reached me from the Queen's Advocate, and from Her Majesty's Attorney and Solicitor General. You will perceive that, advertng to the facts now for the first time brought under their notice, they affirm the validity of the endowments in point of law, while they continue to maintain the insufficiency of the authority to which alone the order itself referred as the foundation of the measure.

I regret that the real basis on which the Act proceeded was not communicated to me in answer to my first demand for explanation on the subject, in which case this discussion would have been saved.

The legal right being now established, no further question respecting them can remain for the consideration of Her Majesty's Government.

The Synod of the Scots Church in Upper Canada has, as you are aware, made the strongest representations against these endowments, and especially against what they apprehend must follow, namely, that the ecclesiastical authority thereby established in the Parishes created by this measure must affect, not merely the members of the Church of England, but those also of other religious communions. If this be really the legal consequence of the measure, of course the Ministers of the Crown cannot prevent it. I confess, however, that I do not distinctly understand what is that ecclesiastical authority which the Incumbents of the Church of England have thus acquired, and against which the members of the Scots Church remonstrate; I am much disposed to doubt, whether, in practice or in theory, the fifty-seven Rectories will exercise any authority, spiritual or temporal, excepting over those who may voluntarily submit themselves to it.

If, however, any members of the Scots Church, or of any other Christian community, shall insist upon a further investigation of the question of law, and shall be able to state any material fact or to suggest any important argument which may hitherto have escaped notice, it will be my duty to afford them the same facility for bringing the

question under the review of the highest accessible legal authority, which has already been afforded to the Clergy of the Church of England but as there is little prospect of any such fact or argument being now elicited, I should rejoice to believe that the discussion is finally closed. I trust that the efforts which you have been instructed to make for the adjustment of the question of the Clergy Reserves, will tend to the same result.

I have, &c., (Signed) GLENELG.

(A.)
Downing Street,
19th December, 1837.

Sir,—I have the honour herewith to transmit to you certain documents which I referred to you on the 12th of April last, on the subject of the endowment of certain Rectories in the Province of Upper Canada. I also enclose a copy of the report made by you and by the Attorney and Solicitor General in answer to that reference, with copies of a correspondence which has since taken place on the subject between myself and the Lieutenant Governor of Upper Canada; I also enclose a copy of the commission under which the Government of the Province was administered in the month of January 1836, when the order of the Lieutenant Governor in Council respecting those Rectories was made.

Adverting to these various documents, and especially to the report of the Archdeacon of Toronto accompanying Sir F. Head's Despatch of the 18th of October, I am to request that, in concurrence with Mr. Attorney and Mr. Solicitor General, you would report to me your and their joint opinion, whether the addition of the material facts now communicated to you, affects the conclusion which you and they adopted and reported to me on the 8th of June; and if so, you will have the goodness to report to me the answer which you now would give to the questions proposed in my letter of the 12th of April, which I will transcribe.

They were as follow; namely,

First. Adverting to the terms of the Statute 31 Geo. 3, Cap: 31, Sec. 36 to 40, and to the terms of the Royal Commission, could the Lieutenant Governor with the advice of the Executive Council lawfully constitute and erect or endow an Parsonage or Rectory within the Province without the further signification of Her Majesty's pleasure?

Secondly. Can Lord Ripon's Despatch of the 5th April, 1832, be regarded as signifying Her Majesty's pleasure for the erection of Parsonage or for the endowment of them, or for either of those purposes?

Thirdly. Are the erection and the endowment of the fifty-seven Rectories by Sir J. Colborne valid and lawful acts?

Fourthly. If the preceding questions be answered in the affirmative, have the Rectors of the Parishes so erected and endowed the same eccle-

siastical authority within their respective limits as is vested in the Rector of a Parish in England, or within what other bounds is that authority restricted?

I have, &c.,

(Signed) GLENELG.

The Queen's Advocate,

with counterparts to the Attorney General and Solicitor General.

(B.)

(No. 55.)

Extract of a Despatch from Viscount Goderich to Sir. J. Colborne, dated Downing Street, 21st November, 1831.

"With respect to the Clergy Reserves, I have no hesitation whatever in stating that I entirely concur with the Assembly in thinking that they form a great obstacle to the improvement and settlement of the Province, without being productive of any corresponding advantage to make up for the inconvenience. During the forty years the system of making these Reserves has existed the total amount of the income they have afforded has not equalled the expense incurred in their management.

"I find by the Abstract of the Income and Expenditure of the Corporation for managing the Reserves that the receipts during the last nine years have not averaged more than £200 a year, and that the whole of these sums have been absorbed by the expenses of the officers of the Corporation. It is indeed stated that a considerable number of Leases have been granted, and that a yearly income may be expected from the land so let of £3,350, currency; it appears, however, that this sum is what is calculated upon as the amount of the rent which ought to be obtained, not what has been actually received; and I fear that when the expenses of management and collection come to be deducted, and the necessary allowance made for bad debts, the net proceeds would be very considerably reduced; even supposing the nominal rent to be collected it would be but a small sum when compared with the burden inflicted upon the Colony. It seems indeed to be proved by what has been experienced, not only in Canada but in the Australian Colonies, that land in countries where so much remains unappropriated can only be profitably occupied by those who have the stimulus of personal and permanent interest. Hence the income derived from landed property retained in the hands of the Government for any public purpose is trifling compared to the inconvenience it occasions; the same sum raised in almost any other manner would be much less burdensome to the Colony.

"Under these circumstances I cannot entertain a doubt that an end should immediately be put to the system of reserving a seventh of the waste lands in Canada for the support of a Protestant Clergy; that which would be an objectionable mode of raising a revenue for any public purpose is still more strongly to be condemned as a provision for the ministers of religion, since it must

have a direct tendency to render odious to the inhabitants those to whom their good-will and affection are so peculiarly needful.

"Such are the considerations by which His Majesty's Government have been influenced in coming to the conclusion that the retention of the Clergy Reserves in their present state is inexpedient. It is scarcely necessary to protest against this conclusion being construed into an acquiescence in the opinion expressed in a petition upon this subject, signed by a considerable number of the inhabitants of the Province, "that any kind of Church Establishment, circumstanced as Upper Canada is, is essentially anti-Christian and baneful to every interest of humanity." I am convinced that this is a sentiment which the great majority of those by whom the petition was signed would not seriously mean to adopt, and that in their eagerness to get rid of a practical grievance, they have incautiously sanctioned speculative opinions, which I have no doubt that upon mature reflection they would disavow. Believing this to be the case, I decline to enter into any argument for the purpose of refuting an assertion, the justice of which I so entirely deny. It is sufficient to repeat that His Majesty's Government have advised the abandonment of the Reserves, for the simple reason that after an experience of forty years they have been found not to answer the expectations entertained at the time the system was established, but have entailed a heavy burden upon the Province without producing any corresponding advantage.

"In a separate despatch I have described in detail the measure it will be necessary to adopt for the purpose of causing these Reserves to revert into the general mass of the Crown Estate, when they will be managed by the same officers, and according to the same rules."

(C.)

(No. 56.—Copy.)

Downing Street, 21st Nov., 1831.

SIR,—In my despatch of this date, No. 55, I have announced to you the intentions of His Majesty's Government on the subject of the Clergy Reserves in Upper Canada, and have apprized you that I should in a separate despatch describe in detail the measures it would be necessary to adopt for the purpose of causing those Reserves to revert into the general mass of the Crown Estate. I now proceed to execute this purpose. The statute 31 Geo. III. cap. 31, sec. 36 to 40, provides for the appropriation of lands for the maintenance of a Protestant Clergy, and for the erection and endowment of Rectories, the presentation of incumbents, and the manner in which such incumbents shall hold their livings. The forty-first section, which immediately follows those enactments, is expressed in the following words:—

"Provided always, that the several provisions hereinbefore contained respecting the allotment and appropriation of lands for the support of a Protestant Clergy within the said Provinces, and

also respecting the constituting, erecting, and endowing Parsonages or Rectories within the said Provinces, and also respecting the presentation of incumbents or ministers to the same, and also respecting the manner in which such incumbents or ministers shall hold and enjoy the same, shall be subject to be varied or repealed by any express provisions for that purpose contained in any act or acts which may be passed by the Legislative Council and Assembly of the said Provinces respectively and assented to by His Majesty, his heirs or successors, under the restrictions hereinafter provided."

The forty-second clause then proceeds to enact, that whenever any act shall be passed by the Legislative Council and Assembly for any of the before-mentioned purposes, such act shall, "before any declaration or signification of the King's assent thereto," be laid before both Houses of Parliament in Great Britain, and that His Majesty shall not signify his assent until thirty days after the act shall so have been "laid before the two Houses.

Subsequently to the date of this Act of Parliament the Corporation for the Management of the Clergy Reserves was established by a Charter issued under the Great Seal of the Province; that body have granted Leases of a considerable quantity of land, none of which, as I understand, are made to endure for more than twenty-one years from their respective dates.

27 The statute 7 & 8 Geo. IV. cap. 62, authorized the Governors of the Provinces, with the consent of the Executive Council, in pursuance of any instructions which might be issued to them by His Majesty through one of his Principal Secretaries of State, to sell a part of the Clergy Reserves, not exceeding one-fourth of the whole, provided that in no one year more than 100,000 acres were so sold; the money arising from the sales was to be invested in the Public Funds of this Kingdom, and the interest of that investment was declared applicable either to the improvement of the unsold Reserves or to the purposes for which the Reserves were originally made.

It appears that in pursuance of this statute 74,819 acres of the Clergy Reserves have been sold up to the month of June last, for sums together amounting to £50,637 7s. 6d., currency, and that the sum of £—— was due by the purchasers, who by the terms of their contracts were liable to the payment of interest.

In order to accomplish effectually the designs which I have explained in the despatch already referred to, it will be necessary that so much of the statute 31 Geo. III. cap. 31, as relates to the allotment and appropriation of lands for the support of the Protestant Clergy within the Province of Upper Canada should be repealed by an act to be passed by the Council and Assembly in exercise of the authority committed to them for that purpose by the forty-first section of the Act. The Bill, if so passed, must be accompanied by an Address from the Legislative Council and Assembly, desiring that it may be "transmitted to

England without delay, for the purpose of being laid before Parliament previously to the signification of His Majesty's assent thereto."

A simple repeal of this part of the Act of 1791 would give Birth to some questions of an embarrassing nature, the discussion of which it is very desirable to preclude. The questions which I anticipate would be, 1st, whether the Reserves already made would vest in his Majesty absolutely, or would be held by him upon any trust for the benefit of the Protestant Clergy; 2dly, whether the Leases granted by the Corporation for managing the Reserves would be still subsisting; 3dly, whether the Rent reserved on those Leases would be payable to His Majesty or to the Corporation; 4thly, whether the money already raised by Sales under the Act of 1827 would remain applicable or not to the purposes expressly declared by that Statute. It might be suggested, as a further doubt, whether the Corporation would continue in existence, and whether the Powers of Sale given by the Act of 1827 were to be exercised any further. The solution of those questions is, however, obvious; the Corporation could not survive the extinction of the object for which it was erected; the Power of Sale could not be exercised after the subject of sale viz. the Clergy Reserves, had ceased as such to exist.

To meet, however, still more effectually the two last-mentioned questions, you will, as soon as the Act shall have been introduced into the Assembly, intimate to the Clergy Corporation that it is the express desire of His Majesty's Government that until the Bill shall have finally passed into a Law, or shall have been finally rejected they do abstain from granting any more Leases of the Clergy Reserves; I cannot doubt their ready compliance, and am most reluctant to reason, even hypothetically, on the contrary supposition. But as it will be necessary to prevent improvident Leases, which on the haste and excitement of the moment might be made, you will, in the unfortunate contingency of the Corporation persisting in making them, direct the Attorney General to take such measures as may be best adapted to bring to trial the validity of the Charter itself. I apprehend that the result must be to ascertain that it is void in point of strict Law. But it is impossible to deprecate such a controversy too earnestly, or to contemplate it at all, except as an extreme remedy in a case of extreme importance.

Whenever the Act shall have been finally passed the continued existence of the Charter would be of no practical importance, though it would be on the whole desirable that the Charter should be then surrendered.

With regard to the continuance of the Power of Sale under the Statute 7 & 8 Geo. 4. c. 62, you will immediately signify to the Officers employed under that Statute His Majesty's commands that they do abstain from acting any further in execution of it after the 30th June 1832, and that during the half-year from January

1st to that Date the Sales to be made should not exceed in number of Acres the number actually sold in the preceding half-year.

The difficulties which might oppose or partially frustrate the execution of the designs of His Majesty's Government being thus obviated, it remains to consider what provisions the proposed Act of Assembly should contain.

First, then, it should be enacted, that so much of the British Statute of 1791 as relates to the Appropriation of Clergy Reserves shall be repealed. But as it is unnecessary and would be highly inconvenient to repeal so much of that Act as relates to the erection and Endowment of Parsonages, it will be fit, in order to obviate the possibility of mistake, that the precise words upon which alone the repeal is to operate should be quoted in the repealing Act.

Secondly, to remove all doubts as to the effect of the repeal, it should be expressly provided that the reserved Lands should immediately vest in His Majesty and be held by him, His Heirs and Successors, in the same manner in every respect as if the Provisions to be repealed had never been enacted.

Thirdly, the Leases granted by the Clergy Corporation should be declared to be as valid as though the repealing Act had not been passed; but the Tenant should be required to attorn to His Majesty, and to pay their Rents to Him, or to the Receivers of His Land Revenue in the Province.

Fourthly, all Sales effected, and all Acts done under the Statute 7 & 8 Geo. 4. Cap. 62., should be declared as valid as though the repealing Act had not been passed.

Fifthly, the only additional Provision, the necessity of which I can anticipate, would be an enactment declaring that henceforward no grant of Lands wherever made shall be deemed invalid or ineffectual, by reason of the absence of a Specification of the Clergy Reserves appropriated in respect of such grant. With reference to future grants this of course would be superfluous, but it might obviate some inconvenient doubts as to the effect in future of past neglects of this part of the Act of 1791.

A Provincial Statute embracing these provisions, and neither exceeding nor falling short of them in any material respect, would, I apprehend, effectually set at rest all the questions respecting the Clergy Reserves, to which I have adverted in my accompanying despatch, except in the possible, but I trust very improbable event, of either House of Parliament addressing His Majesty to withhold His Assent. That however is a contingency against which no security can be taken, and upon which it could answer no practicable purpose to speculate.

It remains to consider what steps should be taken in order to bring this question fairly under the notice of the two Branches of the Provincial Legislature. For that purpose it will be fit that they should be invited to the consideration of the question by a message from His Majesty. Anxi-

ous as I am to relieve you to the utmost possible extent from Responsibility upon an occasion of so much gravity and importance, I enclose to you the copy of a message to be transmitted in His Majesty's Name to both of the Houses of the Provincial Legislature.

The same motive induces me to transmit to you the draft of a Bill, which has been prepared under my direction, for carrying the views of His Majesty's Government into effect. Without intending to fetter the discretion of the Law Officers of your Government, I must express my earnest wish that the Bill might be introduced in terms corresponding as closely as possible with those of the accompanying draft.

I am not sufficiently conversant with the usages of the Canadian Assembly to venture to prescribe anything respecting the manner in which this Bill should be brought forward. If I am not misled by the analogy of English Parliamentary Proceedings, I should desire that the Act may be introduced to the notice of the Assembly by the Attorney General, or if he has not a seat in that house, then by any official member in whose ability and discretion you can place adequate confidence. Should the Law pass, in any Form, you will neither give nor refuse your consent, but will reserve the Bill for the signification of His Majesty's pleasure. Indeed I conceive that to be the proper course of proceeding in every case in which an Act of the Canadas is required to be laid before the Two Houses of Parliament.

I have, &c.,

(Signed)

GODERICH.

Lieut. General Sir John Colborne, K. C. B.

&c. &c. &c.

(D.)

Draft of a Message to the Legislature of Upper Canada.

The Lieutenant Governor has received His Majesty's Commands to make the following Communication to the Legislative Council [the House of General Assembly], in reference to the Lands which, in pursuance of the Constitutional Act of this Province, have been set apart for the support and maintenance of a Protestant Clergy.

The Representations which have at different times been made to His Majesty and His Royal Predecessors, of the prejudices sustained by His faithful subjects in this Province from the appropriation of the Clergy Reserves, have engaged His Majesty's most attentive consideration. His Majesty has, with no less anxiety, considered how far such an Appropriation of Territory is conducive either to the temporal welfare of the Ministers of Religion in this Province, or to their spiritual influence. Bound no less by his personal feelings than by the sacred obligations of that station to which Providence has called him to watch over the interests of all the Protestant Churches within his dominions, his Majesty could never consent to abandon those interests with a view to any objects of temporary and apparent expediency.

*Communicated by L. Colborne
to the Council 25/1/1837*

It has therefore been with peculiar satisfaction the lands to be thereby granted, and that such that, in the result of his inquiries into this sub-lands so allotted and appropriated should be, as object, His Majesty has found that the changes nearly as the circumstances and nature of the sought for by so large a proportion of the inhabi- case would admit, of the like quality as the land: tants of the Province may be carried into effect, in respect of which the same should be so allotted without sacrificing the just claims of the Estab- and appropriated, and should be, as nearly as the lished Churches of England and Scotland. The same could be estimated at the time of making waste lands which have been set apart as a pro- such grant, equal in value to the seventh part of vision for the Clergy of those venerable bodies the land so granted; and it was thereby further have hitherto yielded no disposable revenue. The enacted, that all and every the rents, profits, or period at which they might reasonably be ex- emoluments which might at any time arise from pected to become more productive is still remote. such lands so allotted and appropriated as afore- His Majesty has solid grounds for entertaining said should be applicable solely to the mainten- the hope, that before the arrival of that period, it ance and support of a Protestant Clergy within may be found practicable to afford the Clergy of the Province in which the same should be situ- those Churches such a reasonable and moderate ated, and to no other use or purpose whatever provision as may be necessary for enabling them And whereas in pursuance of the said statute properly to discharge their sacred functions. divers tracts of land within this Province have

His Majesty therefore invites the Legislative been allotted and appropriated for the support Council [the House of General Assembly] of and maintenance of the Protestant Clergy within Upper Canada to consider how the powers given the same: And whereas by certain Letters Pa- to the Provincial Legislature by the constitution- tent under the Great Seal of this Province, bear al act, to vary or repeal this part of its provisions, ing date the day in the can be called into exercise most advantageously Year His said late Majesty King George the Third did constitute A. B. and C. D. and their successors to be a body corporate: And whereas the said corporation have, in pursuance of the powers so vested in them as aforesaid, de- mised various parts of the said Clergy Reserve within this Province to divers persons for term

(Signed) GODERICH.

Draft of a Bill to be laid before the Legislature of Upper Canada.

Whereas by an Act passed in the Parliament of Great Britain in the thirty-first year of the reign of His late Majesty King George the Third, sums have been reserved and made payable a- intituled, "An Act to repeal certain parts of any way of rent: And whereas by a certain Ac- Act passed in the fourteenth year of His Majes- of the Parliament of the United Kingdom o- ty's reign, intituled 'An Act for making more Great Britain and Ireland, passed in the 7th and effectual provision for the Government of the 8th year of the reign of his late Majesty King Province of Quebec in North America,' and to George the Fourth, intituled "An Act to autho- make further provision for the Government of the rize the sale of a part of the Clergy Reserves in the said Province," it was amongst other things en- the Provinces of Upper and Lower Canada," i- acted, that it should and might be lawful for His is enacted, "that it shall and may be lawful for said late Majesty, His Heirs and Successors, to the Governor and Lieutenant Governor, or office administering the Government of the said Pro- authorize the Governor or Lieutenant Governor vices or either of them, with the consent of th- of each of the said Provinces respectively, or the Executive Council appointed within such Pre- person administering the Government therein, to vince for the affairs thereof, in pursuance of an instructions which may be issued to such Gover- make from and out of the lands of the Crown nor, Lieutenant Governor, or other officer as afore- within such Provinces such allotment and appro- said by His Majesty, through one of His Princ- priation of lands for the support and maintenance pal Secretaries of State, to sell, alienate, and con- of a Protestant Clergy within the same as may vey in fee simple, or for any less estate or inter- bear a due proportion to the amount of such lands est, a part of the said Clergy Reserves in each of the said Provinces (not exceeding in either Pro- within the same as had at any time been granted vince one fourth of the Reserves within suc- by or under the authority of his said late Majesty; Province,) upon, under, and subject to such co- and that whenever any grant of lands within ditions, provisoes, and regulations as His Majes- either of the said Provinces should thereafter be ty, by any such instructions as aforesaid, shall be made by or under the authority of His Majesty, pleased to direct and appoint; provided neverthe- His Heirs or Successors, there should at the same less, that the quantity of the said Clergy Reserve time be made, in respect of the same, a propor- so to be sold as aforesaid in any one year i- tionable allotment and appropriation of lands for either of the said Provinces shall not in th- the above-mentioned purpose within the Town- whole exceed 100,000 acres; provided also, th- ship or Parish to which such lands so to be granted the monies to arise by or to be produced fro- unless the same should contain a specification of any such sale or sales shall be paid over to suc- the lands so allotted or appropriated in respect of officer or officers of His Majesty's Revenue with

in the said Provinces respectively as His Majesty shall be pleased to appoint to receive the same, and shall by such officer or officers be invested in the public funds of the United Kingdom of Great Britain and Ireland in such manner and form as His Majesty shall from time to time be pleased to direct; provided also, that the dividends and interest accruing from such public funds so to be purchased shall be appropriated, applied, and disposed of for the improvement of the remaining part of the said Clergy Reserves, or otherwise for the purposes for which the said lands were so reserved as aforesaid, and for no other purpose whatsoever, save only as far as may be necessary to apply the same or any part thereof in or towards defraying the expenses of each of them are and is hereby required to attend, or attendant upon any such sale or sales as aforesaid; and which appropriations shall be so made in such manner and form and for such special purposes as His Majesty from time to time shall approve and direct." And whereas in pursuance of the said last recited Act the Lieutenant Governor for the time being of this Province, with the consent of the Executive Council, hath, in pursuance of instructions for that purpose issued by His late Majesty King George the Fourth through one of His Principal Secretaries of State, effected sales of divers parts of the said Clergy Reserves; And whereas by an address to both Houses of the Provincial Legislature, bearing date on the day of last, Major General Sir John Colborne, Knight, Commander of the most Honourable Military Order of the Bath, did signify to both of the Houses of the Provincial Legislature His Majesty's most gracious invitation to consider how the powers given to the Provincial Legislature by the Constitutional Act to carry or repeal that part of its provisions which relates to the lands allotted and appropriated in this Province for the support and maintenance of a Protestant Clergy could be called into exercise most advantageously for the spiritual and temporal interests of His Majesty's faithful subjects in this Province: Now therefore, be it and it is hereby enacted, &c., that so much as is hereinbefore recited of the said Act of the British Parliament so passed as aforesaid in the 31st year of the reign of His said late Majesty King George the Third shall be and the same is hereby repealed.

And be it further enacted, That from henceforth no grant heretofore made by or on the behalf of His Majesty or any of his Royal predecessors of any lands situate within this Province shall be or be deemed invalid or ineffectual, or be liable to be impeached, vacated, or set aside, by reason that any such grant did not contain a specification of the lands allotted or appropriated for the support and maintenance of a Protestant Clergy in respect of the lands thereby granted, but every grant of lands within this Province heretofore made by or on the behalf of His Majesty or any of His Royal predecessors in which any such specification may have been omitted shall henceforth be and shall be deemed and taken from the day of the date thereof to have been as

valid and effectual in the law as though such grant had contained the specification aforesaid. And be it further enacted, that all lands heretofore appropriated within this Province for the support and maintenance of a Protestant Clergy now remaining unsold shall be and the same are hereby declared to be vested in His Majesty, His Heirs and Successors, as of his and their original estate, absolutely discharged from all trust for or for the benefit of a Protestant Clergy, and of and from all and every the claims and demands of such Clergy upon or in respect of the same.

And be it further enacted, that all and every the tenants or tenant of the lands so demised as aforesaid by the said Corporation shall and they each of them are and is hereby required to attend, and during the remainder of the terms by such respective leases granted to pay the rents thereby respectively reserved to His Majesty, His Heirs and Successors, or to such person as shall by His Majesty, His Heirs and Successors, or by the Lords Commissioners of His Majesty's Treasury for the time being, be appointed to receive the same.

Provided always, and be it further enacted, that nothing herein contained shall take away or affect, or be construed to take away or affect, the right or title of any person or persons in or to any lands which may by any such person or persons be holden or enjoyed, or which any such person or persons may claim to hold or enjoy, by virtue of any sale, alienation, conveyance, or contract made, excepted, or entered into in pursuance of the above-recited act of Parliament passed in the seventh and eight year of his said late Majesty's reign, but that every such sale, alienation, or contract shall be as valid and effectual in the law, and shall henceforth have and continue to have the same force, virtue, and effect, as if this present act had not been made.

(E.)

(Confidential.)

Downing Street, 5th April, 1832.

Sir,—In my Despatch, No. 57, of the 21st November 1831, I authorized you to apply in the year 1832, towards the maintenance of the Bishop and other Ministers of the Church of England in Upper Canada, £5,000 out of the Casual and Territorial Revenue of that Province; and I estimated that the resources available to the same object from Provincial Funds by Law applicable to it would amount to about £1,000 making in the whole a sum of £6,000. I directed you at the same time to divide the sum into three parts, whereof one, amounting to £1,500 was to be paid to the Bishop, another, amounting to nearly £1,000, to the Two Archdeacons of York and Kingston, and the third, of £3500, in aid of those payments which the Society for the propagation of the Gospel in Foreign parts is in the habit of making to the Ministers of the Church of England who are denominated Missionaries. You have since been informed by me in my Despatch, No. 62, of the 30th of March last, that His Majesty's Govern-

ment have determined to call upon Parliament to vote, during the Life of the Bishop, the whole of his income. The charge therefore for the maintenance of the Clergy for the year 1832 will be reduced from £6000 to £4500. I have since learned from your private letter of the 16th of February, that the resources derivable from the funds set apart for this object will considerably exceed the amount at which, judging from the information in my possession, I had ventured to rate them. It now appears that the interest upon instalments to be paid in 1832, upon Reserves antecedently purchased, will amount to £1200; and that the net produce of the Rents of Clergy Lands leased will not be less than £2300. To these two sums will be to be added the interest upon the purchase money of these Reserves vested in our funds, which will amount to about £300. The total of these items will be £3800 instead of £1000 at which I had estimated them; and if to this total there be added from the casual and territorial revenue £1000 making in the whole £4800, there will be abundant Means of meeting all the demands for salaries, including the two Archdeacons, for which I had intended to provide. A question therefore naturally arises, as to the most advantageous mode of disposing of the £4000 to be taken out of the casual and territorial revenue, which had been destined to this particular service, and which will no longer be required for that purpose. I have considered with great attention the observations contained in your private letter of the 16th of February, and the propositions which result from them; and I am happy to find that your practical views, founded upon personal knowledge and experience, are so coincident with those which upon a more speculative view I had been led to entertain. I quite concur with you in thinking that the greatest benefit to the Church of England would be derived from applying a portion at least of the funds under the control of the Executive Government in the building of Rectories and Churches, and I would add, in preparing, as far as may be, for profitable occupation that moderate portion of Land which you propose to assign in each Township or Parish for increasing the future comfort, if not the complete maintenance, of the Rectors. With this view it appears to me that it would be most desirable to make a beginning in this salutary work by assigning to it a portion, at least, of the £4000 to which I have before alluded, as being no longer required (during the present year at all events) for the payment of clerical salaries. I say a portion of this sum, because I am led to think that it would be expedient, with a view to prevent jealousy and attempts at interference with this Territorial fund, to permit some part of it to be disposed of for religious objects generally, without reference to the particular modes of belief which certain classes of the community may entertain. Some of it might, for instance, be applied to Churches for the Presbyterians, some for Roman Catholic

Chapels, and some even for the Methodists, particularly that portion of them who may be in communion with the Wesleyan Methodists of this country. It is obviously impossible to think of aiding every subdivision of Religionists, whose varieties are too indefinite to enumerate; and I feel that even with respect to those classes to which I have alluded I cannot well undertake to prescribe to you from hence the exact proportion of assistance which it might be fit to grant to each. £4000 in the whole will be disposable and I willingly leave it to your discretion to decide as to the proportionate distribution of that sum. I am well aware that in the execution of this duty you will have to steer a difficult course and that it will require no small tact to determine by what practical means these important objects can best be attained; the diffusion of religious feelings and motives of conduct is the great point to be aimed at, and His Majesty's government must naturally feel anxious that these should be as extensively as possible in unison with the Established Church of this Country; but it can not be forgotten that the condition of Society in such a country as Upper Canada presents difficulties in the pursuit of this object which are very serious, and that a state of religious peace is above all things essential in establishing in the minds of the people the efficacy of religious principles. Whilst, therefore, I admit without reserve my own extreme anxiety for the wider extension of the Church of England in Upper Canada, I feel it to be scarcely less important earnestly to urge the inexpediency of seeking to promote that great object by aiming at the exclusion or repression of other Churches.

I communicate to you these sentiments on the part of the King's Government, with an entire reliance upon your judgment and coincidence of views; and the present temper of the majority of the House of Assembly, together with the increasing prosperity and general tranquillity of the Province, encourage me to entertain a sanguine hope that the present opportunity, if wisely and judiciously used, may lead to the most important and beneficial results.

I have, &c.,
GODERICH.

(Signed)
Lieut. Gen. Sir John Colborne, K. C. B.,
&c. &c. &c.

P. S. Upon a point so important as the distribution of the £4000 referred to in this Despatch, I should wish no actual step to be taken until I shall have had an opportunity of considering any suggestions which you may have to offer upon the subject, which I trust I may receive at as early a period as may be convenient for you to favor me with them.

(F.)

(Copy.)
WILLIAM R.

Our will and pleasure is, that you prepare a Bill for our Royal Signature, to pass our Great Seal

of our United Kingdom of Great Britain and Ireland, in the words or to the effect following: viz:—

William the Fourth, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to our right trusty and right well-beloved Cousin and Councillor Archibald Earl of Gosford, greeting.

Whereas we did, by certain Letters patent bearing date at Westminster the twenty-fourth day of November one thousand eight hundred and thirty, in the first year of our Reign, constitute and appoint our right trusty and well-beloved Matthew Lord Aylmer, Knight Commander of the Most Honorable Military order of the Bath, Lieutenant General of our Forces, to be Captain General and Governor-in-Chief in and over the Provinces of Upper and Lower Canada during our Royal pleasure: And whereas we did, by certain other Letters patent, bearing date at Westminster the second day of April in this present year one thousand eight hundred and thirty-five, in the fifth year of our Reign, constitute and appoint our right trusty and right well-beloved Cousin and Councillor William Pitt Earl Amhurst to be our Captain General and Governor-in-Chief in and over the Provinces of Upper and Lower Canada aforesaid, during our Royal pleasure, and by the said last-recited Letters patent of the twenty-fourth day of November one thousand eight hundred and thirty, as by these said recited Letters respectively, relation being thereunto had, may more fully and at large appear: Now know you, that we have revoked and determined, and by these presents do revoke and determine, the said recited letters patent of the second day of April one thousand eight hundred and thirty-five, and every clause, article, and thing therein contained: And further know you, that we, reposing especial trust and confidence in the prudence, courage, and loyalty of you the said Archibald Earl of Gosford, of our especial grace, certain knowledge, and mere motion, have thought it to constitute and appoint you to be, during our pleasure, our Captain General and Governor-in-Chief in and over our Province of Upper Canada, and in and over our Province of Lower Canada, respectively bounded by a line to commence at a stone boundary on the North Bank of the Lake Saint Francis at the Cove West of the Point au Baudet in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of North thirty-four degrees West to the westernmost angle of the said Seigneurie of New Longueuil, thence along the North-western boundary of the Seigneurie of Vaudreuil running North twenty-five degrees East until it strikes the Ottawas River into the Lake Tornisanning, and from the head of the said Lake by a line drawn due North until it strikes the boundary line of Hudson's Bay; the Province of Upper Canada to comprehend all such Lands, Territories, and Islands lying to the Westward of the said line of division as were part of our Province of Quebec; and the Province of Lower Canada to comprehend all such Lands, Territories, and Islands lying to the Eastward of the said line of division as were part of our said Province of Quebec: And we do hereby require and command you to do and execute all things in due manner that shall belong to your said command and the trust we have reposed in you, according to the several powers, provisions, and directions granted or appointed you by virtue of our present commission, and of an Act passed in the thirty-first year of the Reign of His late Majesty King George the Third, intituled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled "An Act for making more effectual provision for the Government of Quebec, in North America," and to make further provision for the Government of the said Province," and of such instructions as are herewith given to you, or which may from time to time be hereafter given to you, in respect to the said Provinces, or either of them, by us, under our Sign Manual and Signet, or by our order in our Privy Council, or through one of our principal Secretaries of State, and according to such Laws as are now in force or shall hereafter be made and established within our said Provinces of Upper Canada and Lower Canada under and by virtue of such powers, provisions, and directions as aforesaid: And our will and pleasure is, that you the said Archibald Earl of Gosford, as soon as may be after the publication of these our Letters patent, do take the oaths appointed to be taken by an Act passed in the first year of the Reign of King George the first, intituled "An Act for the further security of His Majesty's person and Government, and for the succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the hopes of the pretended Prince of Wales, and his open and secret Abettors," as altered and explained by an Act passed in the Sixth year of the Reign of King George the third, intituled "An Act for altering the oath of Abjuration and the assurance, and for amending so much of an Act of the seventh year of Her late Majesty Queen Anne, intituled "An Act for the Improvement of the Union of the two Kingdoms," as after the time therein limited requires the delivery of certain lists and copies therein mentioned to persons indicted of High Treason or Misprison of Treason," or in lieu thereof the oath required to be taken by an Act passed in the tenth year of the Reign of His late Majesty King George the Fourth, intituled "An Act for the relief of His Majesty's Roman Catholic subjects," according as the said former Acts or the said last-mentioned Act shall be applicable to your case; and likewise that you take the usual oath for the due execution of the office and trust of our Captain General and Governor-in-Chief of our said Province of Upper and Lower Canada, of our said Province of Lower Canada, and for the due and impartial administration of justice; and further, that you take the oath re-

quired to be taken by Governors of plantations, to do their utmost that the several Laws relating to trade and plantations be duly observed ; all which said oaths the Executive Councils of our said Provinces of Upper Canada and Lower Canada respectively, or any three or more of the members of either of them, have hereby full power and authority and are required to administer unto you, and in your absence to our Lieutenant Governor, if there be any upon the place, all which being duly performed you the said Archibald Earl of Gosford, or in your absence our Lieutenant Governors of our said Provinces, or persons administering the respective Governments therein, shall administer to each of the members of such Executive Councils as aforesaid such of the said oaths mentioned in the said several Acts as shall be applicable to the case of the individual member of our said Council taking the same ; and you are also to administer to them the usual Oath for the due execution of their places and trusts : And whereas we may find it convenient for our service that certain offices or places within our said Provinces of Upper Canada and of Lower Canada should be filled by our subjects who may profess the Religion of the Church of Rome ; it is therefore our will and pleasure, that in all cases where such persons shall or may be admitted into any such office or place, the oath prescribed in and by an Act of Parliament passed in the fourteenth year of the Reign of King George the Third, intituled "An Act for making more effectual provision for the Government of the Province of Quebec in North America," and also the oath prescribed in and by the Act before mentioned, passed in the tenth year of the Reign of His late Majesty King George the Fourth, shall be duly administered unto them ; and they shall also take the usual oath for the due execution of their places and trusts respectively : We do further give and grant unto you the said Archibald Earl of Gosford full power and authority from time to time and at any time hereafter, by yourself, or by any other to be authorized by you in that behalf, to administer and give such of the said oaths in the said several Acts contained as shall be applicable to the case of the individual to whom the same shall be administered to every such person and persons as you shall think fit, who shall hold any office or place of trust or profit, or who shall at any time or times pass into our said Provinces of Upper Canada and of Lower Canada, or shall be resident or abiding therein : And we do hereby authorize and empower you to keep and use the public Seals of our said Provinces of Upper Canada and Lower Canada for sealing all things whatsoever that shall pass the Seal of our said Provinces respectively ; and, in case of your absence from either of our said Provinces, to deliver the same into the charge and custody of our Lieutenant Governor, or person administering the Government there for the purposes before mentioned, until we shall think fit to authorize you, by an Instrument under our Royal Sign Manual, to commit the custody thereof to such person or person as may be appointed by us for that purpose ; And whereas by the said recited act passed in the thirty-first year of the reign of his late Majesty King George the Third, it is enacted, that there shall be within each of our said provinces of Upper Canada and Lower Canada respectively, a Legislative Council, &c., and an Assembly to be composed and constituted in the manner in the said act described ; and that in the said Provinces we our heirs and successors, shall have power during the continuance of the said act, by and with the advice and consent of the said Legislative Councils and Assemblies, to make laws for the peace, welfare, and good government of the said Provinces respectively, such laws not being repugnant to the said Act ; and that all such law being passed by the said Legislative Councils and Assemblies, and being assented to by us, our heirs and successors, or assented to in our name by such person as we, our heirs and successors shall from time to time appoint to be our Governor or Lieutenant Governor of the said Province respectively, or by such person as we, our heirs and successors, shall from time to time appoint to administer the government within the same, as by the said Act, declared to be, by virtue of an authority under the authority of the said act, valid and binding to all intents and purposes whatsoever within the said Provinces : we do hereby give and grant unto you the said Archibald Earl of Gosford full power and authority to issue writs of summons and election, and to call together the Legislative Councils and Assemblies of the said Provinces of Upper Canada and of Lower Canada in such manner as is in the said Act authorized and directed, subject to the provisions and regulations therein contained in that behalf, and to such instructions and authorities as shall be herewith or at any time hereafter given unto you by us in that behalf under our signet and sign manual, or by our order in our Privy Council, or through one of our principal secretaries of State : And we do hereby give and grant unto you the said Archibald Earl of Gosford full power and authority to fix the times and places of holding every Session of the Legislative Councils and Assemblies of our said Provinces of Upper Canada and Lower Canada, and to prorogue the same from time to time, and to dissolve the same by proclamation or otherwise subject nevertheless to the regulations, provisions and directions of the said last-mentioned Act, and to such instructions and authorities as in respect of the premises may be herewith or at any time hereafter given by us unto you under our signet and sign manual, or by our order in our Privy Council, or through one of our Principal Secretaries of State : And we do by these presents authorize and empower you the said Archibald Earl of Gosford, with the advice of the Executive Councils appointed by us for the affairs of our said Provinces of Upper Canada and Lower Canada respectively, from time to time to form, constitute, and erect Townships or Parishes within of

said Provinces, and also to constitute and erect within every Township or Parish which now is or hereafter may be formed, constituted, or erected within our said Provinces, one or more Parsonage or Rectory, or Parsonages or Rectories, according to the establishment of the Church of England; and from time to time, by an instrument under the seal of our said Provinces, respectively, to endow every such Parsonage or Rectory with so much or such part of the lands so allotted and appropriated as by the last-recited Act in that behalf is mentioned in respect of any lands within such Township or Parish which shall have been granted subsequent to the commencement of the same Act, or of such lands as may have been allotted and appropriated for the same purpose by or in virtue of any instructions which may be given by us in respect of any lands granted before the commencement of the last-mentioned Act, as you, with the advice of our said Executive Council of such Province, shall judge to be expedient under the existing circumstances of such Township or Parish, subject nevertheless to such instructions touching the premises as shall or may be given you by us, under our signet and sign manual, or by our order in our Privy Council, or through one of our Principal Secretaries of State: And we do also by these presents authorize and empower you to present, subject to the provisions in the above mentioned Acts in that behalf, to every such Parsonage or Rectory, and to every Church, Chapel, or other ecclesiastical benefice, according to the establishment of the Church of England, within either of our said Provinces, an Incumbent or Minister of the Church of England, who shall have been duly ordained according to the rites of the said Church, and to supply from time to time such vacancies as may happen of Incumbents or Ministers of the said Parsonages, Rectories, Churches, Chapels, or Benefices, or any of them respectively: And we do hereby give and grant unto you the said Archibald Earl of Gosford full power and authority to give warrants under your hand for the issuing of public monies for all public services; and we do particularly require you to take care that regular accounts of all receipts and disbursements of such monies be duly kept: And we do further give to you the said Archibald Earl of Gosford full power and authority, when and so often as any bill which has been passed in the Legislative Council and House of Assembly of either of our said Provinces of Upper Canada and Lower Canada shall be presented unto you for our Royal assent, to declare, according to your discretion, (but subject nevertheless to the provisions contained in the said recited Act passed in the thirty-first year of the reign of his late Majesty King George the Third, and subject also to such instructions, directions, and authorities as we shall herewith or at any time hereafter give unto you in that behalf under our signet and sign manual, or by our order in our Privy Council, or through one of our Principal Secretaries of State,) that you assent to such bill in our name, or that you withhold our assent from such bill, or that you reserve such bill for the signification of our Royal pleasure thereon: And we do hereby authorize and empower you to constitute and appoint Judges, and, in cases requisite, Commissioners of Oyer and Terminer, Justices of the Peace, and other necessary officers and ministers, in our said Provinces of Lower Canada and Upper Canada, for the better administration of justice and putting the laws in execution, and to administer or cause to be administered unto them such oath or oaths as are usually taken for the due execution and performance of offices and places, and for clearing the truth in judicial causes: And we do hereby give and grant unto you full power and authority, when you shall see cause, or shall judge any offender or offenders in Criminal matters, or for any fines or forfeitures due unto us, fit objects of our mercy, to pardon all such offenders, and to remit all such offences, fines, and forfeitures, treason and wilful murder only excepted; in which cases you shall likewise have power upon extraordinary occasions, to grant reprieves to the offenders until and to the intent that our Royal Pleasure may be made known thereon: And we do likewise give and grant unto you full power and authority, with the advice of our Executive Councils of our said provinces of Upper Canada and Lower Canada, to grant lands within the said provinces respectively; which said grants are to pass and be sealed with our seal of such province, and being entered upon Record by such officer or officers as shall be appointed thereunto shall be good and effectual in law against us, our heirs and successors: And we do hereby require and command all our officers and ministers, civil and military, and all other inhabitants of our said provinces of Upper Canada and Lower Canada, to be obedient, aiding, and assisting unto you the said Archibald Earl of Gosford in the execution of this our Commission and of the powers and authorities herein contained: And in case of your death or absence out of our said Province of Upper Canada or our Province of Lower Canada, we do by these presents, in either of such cases, give and grant all and singular the powers and authorities herein to you granted to our Lieutenant Governors for the time being of such provinces respectively, or of either of them, as the case may be, or, in the absence of any such Lieutenant Governors or Lieutenant Governor, to such person or persons as we may by warrant under our Sign Manual authorize and appoint to be the Administrator of the Government of such Provinces or either of them, such powers and authorities to be by them or him executed and enjoyed during our pleasure; but if upon your death or absence out of our said provinces of Upper Canada and Lower Canada, or either of them, there be no person upon the place, commissioned and appointed by us to be our Lieutenant Governor, or specially appointed by us to administer the Government within our said provinces, our will and pleasure is, that until you return from any such absence, or until our further

pleasure shall be known, the senior Military officer for the time being in command of our forces within our said province of Upper Canada or our said province of Lower Canada, as the case may be shall take upon him the administration of the government thereof, and shall execute in our said provinces respectively this our commission and the aforesaid instructions, and the several powers and authorities therein contained, in the same manner and to all intents and purposes as other our Captain General and Governor-in-chief should or ought to do: And we do hereby give and grant unto you the said Archibald Earl of Gosford full power and authority, in case any person or persons commissioned or appointed by us to any office or offices within our said provinces of Upper Canada or Lower Canada from which he or they may be liable to be removed by us shall in your opinion be unfit to continue in our service, to suspend such person or persons from his or their several employments until our pleasure shall be known. In witness, &c. Witness, &c. And for so doing, this shall be your warrant. Given at our Court at Windsor this 13th day of June 1835, in the fifth year of our reign.

By his Majesty's command.

(Countersigned) GLENELG.

(G.)

Doctors Commons, 24th January, 1838.

My Lord,—We are honoured with your Lordship's commands, signified in your letter of the 19th ultimo, transmitting certain documents which were referred to us on the 12th of April last on the subject of the endowment of certain Rectories in the Province of Upper Canada; also enclosing a copy of the report made by us in answer to that reference, with copies of a correspondence which has since taken place on the subject, between your Lordship and the Lieutenant Governor of Upper Canada; also enclosing a copy of the Commission under which the Government of the Province was administered in the month of January 1836, when the order of the Lieutenant Governor in Council respecting those Rectories was made.

Adverting to these various documents, and especially to the Report of the Archdeacon of Toronto, accompanying Sir F. Head's despatch of the 18th of October, your Lordship is pleased to request that we would report our joint opinion, whether the addition of the material fact now communicated to us affects the conclusion which we adopted and reported to your Lordship on the 8th of June, and if so, that he would report the answer which we would now give to the questions proposed in your Lordship's letter of the 12th of April; viz.

"First. Adverting to the terms of the Statute 31 Geo. 3. Chap 41. Sec. 36 and 40, and to the terms of the Royal Commission, could the Lieutenant Governor, with the advice of the Executive Council, lawfully constitute and erect or endow any Parsonage or Rectory within the Province without the further signification of His Majesty's pleasure?

"Secondly. Can Lord Ripon's Despatch of the 3rd of April 1832, be regarded as signifying His Majesty's pleasure for the erection of Parsonages or for the endowment of them, or for either of those purposes?

"Thirdly. Are the erection and the endowment of the fifty-seven Rectories by Sir J. Colborne valid and lawful Acts?

"Fourthly. If the preceding questions be answered in the affirmative, have the Rectors of the Parishes so erected and endowed the same ecclesiastical authority within their respective limits as is vested in the Rector of a Parish in England or within what other bounds is that authority restricted?" In obedience to your Lordship's commands, we have the honour to report that, adverting to the various documents, and especially to the instructions contained in Lord Bathurst's despatch to Sir P. Maitland of the 22d of July 1822, referred to in the report of the Archdeacon of York (Toronto,) and also to the terms of the Royal Commission, the whole of which is now before us, we are of opinion,—

1st. That the Lieutenant Governor, with the advice of the Executive Council, could lawfully constitute and erect or endow any Parsonage or Rectory within the Province without the further signification of His Majesty's Pleasure.

2d. We are of opinion, that Lord Ripon's despatch of the 5th of April 1832 cannot be regarded as signifying His Majesty's pleasure for the erection of Parsonages, or for the endowment of them or for either of those purposes.

3d. We are of opinion, that the erection or endowment of the fifty-seven Rectories by Sir John Colborne are valid and lawful Acts.

4th. We are of opinion, that the Rectors of the Parishes so erected and endowed have the same ecclesiastical authority within their respective limits as is vested in the Rector of a Parish in England.

We have, &c.

J. DODSON.

J. CAMPBELL.

R. M. ROLFE.

The Right Hon. Lord Glenelg, &c.

(No. 11.)

(No. 41.)

Copy of a Despatch from Major General Sir George Arthur, K. C. H., Lieutenant Governor of Upper Canada, to Lord Glenelg.

Toronto, 11th July, 1838.

My Lord,—I have had the honour to receive your Lordship's despatch, No. 20, together with a further report from the Queen's Advocate and His Majesty's Attorney and Solicitor General, in addition to that made under the reference of 12th April 1837, upon the validity of the endowment of certain Rectories in this Province which those learned gentlemen, upon the new fact brought under their notice, now affirm.

I have to inform your Lordship, that since my arrival in this country I have been in communication with all the principal persons who have

aken part in this question, and, after a long conference with the Synod in connection with the Church of Scotland, I have addressed that body a letter of which the enclosed is a copy.

It is not, however my intention, to defer measures, but at the first meeting of the Legislature I propose to cause a bill to be introduced for re-investing the Lands reserved for the Clergy in the Crown to be applied for religious purposes, and I have reason to think it will be carried by a considerable majority.

I have, &c.

(Signed) GEO. ARTHUR.

The Right Hon. Lord Glenelg, &c.

Enclosure referred to in No. 11.

Government House, Toronto, 2d July, 1838.

Sir,—I have had the honour to receive your letter of the 22d June, which I have laid before the Lieutenant Governor, together with your former letter addressed to Mr. Joseph, in which you state that the Commission of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland have appointed certain of their members a deputation to wait upon the Lieutenant Governor, for the purpose of requesting such information as it might be in his Excellency's power to give respecting the intentions of the Colonial Government of giving effect to the admissions which you state have been so long and so frequently made by the Ministers of the Crown in regard to the Rights of the Church of Scotland in this Colony. On the 11th ultimo the Lieutenant Governor afforded the deputation the most unreserved personal explanation; and I am now to repeat to you, that it is His Excellency's intention to bring before the Legislature at its next meeting the question of the Clergy Reserves, and his determination to use his utmost endeavours to have it finally settled, with a due regard to the present condition and future welfare of the Province, and in such a manner as shall be most conducive to the promotion of the best interests of all Her Majesty's subjects.

The Lieutenant Governor laid open for your perusal a copy of Sir Francis Head's Despatch, transmitting the report of the Honourable and Venerable the Archdeacon of York, together with other documents which had been submitted to the Law Officers of the Crown, and the consideration of which had led them to form the opinion that the erection or endowment of the Fifty-seven Rectories by Sir John Colborne are valid and lawful acts.

A copy of the Archdeacon's Report, which the Lieutenant Governor believes has already been published, will be transmitted to you in a few days, a copy of Lord Glenelg's Despatch, with this Enclosure, being the opinion of the Law Officers, which was read at the interview on the 11th instant, I have the honour now to enclose; and with reference to the several remarks made thereupon by the deputation, I am directed to refer the following observations:—

1st. The deputation expressed themselves not

to be convinced of the soundness of the opinion of the Law Officers in favour of the legality of the endowments.

In furtherance of the kind disposition manifested by the Secretary of State, that if you should still feel it right to insist upon the further investigation of this question of law, and should be able to state any material fact or to suggest any important argument which might hitherto have escaped notice, and would bring the same forward by petition, the Lieutenant Governor will transmit the same to the Secretary of State; or, as His Excellency understood your desire was to have a judicial determination of the matter, he sees no legal objection to your instituting a proceeding in the Court of Chancery for the repeal of the Patents of Endowment, or in any other manner which you may be advised to adopt in any Court in the Province in which the question can be legally entertained; from the decision of which Court an Appeal can be had to the Judicial Committee of Her Majesty's Privy Council, to which allusion is made, in the Despatch of the Secretary of State for the Colonies, the 9th of February, 1838, No. 20.

If the opinion of the Law Officers had been against the legality of the endowment, His Excellency would probably have directed such a proceeding at the suit of the Crown. But Her Majesty's Government now considering the act legal, the burden of instituting the suit is unavoidably cast upon those who wish to void the Patents.

His Excellency is, however, induced to believe that the whole question of the Reserves will be satisfactorily settled without reference to judicial decision.

2d. In like manner, if it be still your desire to have a judicial determination (upon the claims the Church of Scotland can legally maintain to a participation in the lands reserved under the 31 Geo. 3, c. 31, or to the funds arising from them), that question also can, upon your petition, be submitted to the Secretary of State, with the expression of your wish that it should be referred to the Judicial Committee of the Privy Council.

The Lieutenant Governor hopes, from this ready acquiescence with the implied wish of the deputation, that he gives the sincerest proof in his power of his desire that every justice should be done to your asserted claim; and it ought at the same time to satisfy you that Her Majesty's Government have been sincere in their desire to investigate the question of your rights.

3d. With respect to your apprehension, from the establishment of the Rectories, that the Church of England will exercise some ecclesiastical authority, I am to repeat to you, the Lieutenant Governor's personal observation, that, in His Excellency's opinion, no objection whatever can exist "to a legislative declaration that the establishment and endowment of Rectories in the Province shall not be construed to confer any right to exercise any ecclesiastical or spiritual

power whatever, except over the members of the Church of England," and such a Bill will be proposed under the authority of Her Majesty's Government.

His Excellency commands me to express his very deep regret that this communication has been so long delayed, but he trusts that it will yet reach you soon enough for your purposes at the approaching meeting of your Synod, and that you will be sensible of his great solicitude to inform himself fully of the nature and extent of the claims of all denominations before he finally directed an answer to be returned to your application.

I have, &c.,

(Signed) JOHN MACAULAY.

The Rev. Alexander Gale,
Moderator of the Synod of Canada.

No. 12.

(No. 64.)

Copy of a Despatch from Major General Sir George Arthur, K. C. H., Lieutenant Governor of Upper Canada, to Lord Glenelg.

Government House, Toronto, 22d Sep. 1838.

My Lord,—Since I had the honour of addressing to your Lordship my Despatch of the 18th of July last, I have received from the Rev. Mr. Gale, Moderator of the Commission of Synod, a memorial or protest against the endowment of Rectories in this Province, of which a copy is herewith transmitted.

I should have communicated this document to your Lordship at an earlier period, had I not waited for a copy of the Resolutions relating to clerical endowments which were passed at a meeting of the Presbyterian Ministers at Montreal, and which, though I was led to expect it, has not yet reached my hands.

Accompanying this protest, your Lordship will find a minute of the Executive Council on that document, embodying sentiments in which I do not hesitate to declare my full concurrence.

Your Lordship cannot but observe with regret the spirit in which the protest of the Synod has been drawn up, and the obstacles which it throws in the way of a satisfactory settlement of a question under any circumstances difficult to be disposed of.

I have further the honour to enclose an address to the Queen from the Grand Jury of the District of Bathurst, adopted a short time since.

This address, which is signed by some very worthy and loyal people, has for its object to deprecate the establishment of any dominant church in this Province. In order to show them what the views and intentions of Government were on this point, I have sent them a copy of the letter which I caused to be written to the Rev. Mr. Gale on the 2nd of July, and which I communicated to your Lordship with my despatch No. 41.

I regret to find that the ferment created in the Province by the discussion of this matter is rather

increasing than otherwise, and that I am not met by the opponents of the claims of the Church of England in that temper which I sought to encourage by the letter addressed by my order to the Rev. Mr. Gale.

I nevertheless shall not be deterred from my endeavours to effect an adjustment of this most embarrassing affair in such a manner as to restore tranquillity at the last, if not general contentment.

I have, &c.

(Signed) GEORGE ARTHUR.

Enclosures in No. 12.

(No. 1.)

To His Excellency Sir George Arthur, Knight Commander of the Royal Hanoverian Guelphic Order, Lieutenant Governor of the Province of Upper Canada, Major General commanding Her Majesty's Forces therein, &c. &c.

May it please your Excellency,

A large portion of the people over whom your Excellency holds rule feel they have sustained a grievous wrong. Scotchmen and Presbyterians in Canada, with deep grief, have long seen most important rights,—the sacred rights of the Church of their native land neglected and insulted. With feelings painful in no ordinary degree do they now learn that Acts are proclaimed as legal which directly violate them.

The venerable body over whom I have the honour of presiding, participating with their countrymen in their settled conviction of the injustice of these proceedings, participating with them the painful emotions with which they have filled them, have devolved on me the duty of solemnly protesting before your Excellency, before Canada and the empire, against their possible legality or validity.

Permit me to assure your Excellency that it is a duty, on the discharge of which I enter with the most painful feelings. At these unhappy dissensions within the Christian world in Canada the Infidel triumphs, the enemies of British institutions rejoice.

But though performing it with heaviness of heart, a sense of what is owing to the rights of the venerable Church in which I bear office, and of the ancient kingdom from which we have sprung, a sense too of what is owing to the prevalence of the immutable principles of justice, and above all, a deeply impressed conviction of the momentous consequences to the spiritual well-being of many coming millions of men of our blood and lineage, which the measures now having place must in all human probability produce strengthen me in execution of the charge which has been committed to me to lay before your Excellency, with the utmost respect, and briefly, but also in full truth and sincerity, a summary of the wrong which the Church of Scotland in Canada has sustained, and a detail of the ground of this solemn protest against recent violations of its rights.

It is doubtless known to your Excellency that the first transatlantic settlers of this colony were Scotchmen; that for many of the years of its earliest history, Scotchmen constituted the greatest body of British emigrants, and that, from the spreading of these and their descendants, Scotch Presbyterians form a large part of the population of Upper Canada.

Your Excellency will not hesitate to believe that our countrymen, while thus devoting their lives and fortunes to the enterprise of reducing a remote and desert dependency of the empire to a fertile province, rested in full confidence that the guardian power of the parent State would be watchfully extended over them: that they entered on their arduous and important undertaking with hopeful and cheerful hearts, from the reflections that, though at a distance from the land of their fathers, they were yet in regions which the blood and energies of those fathers had largely contributed to place within the limits of the empire, and might with perfect security rely on being upborne in their dangers and difficulties by its protecting and sustaining arm.

In these their just expectations they have unfortunately been grievously disappointed. In one most important particular, in all that concerns their religious rights and privileges, Scotchmen have been in Canada as exiles from their own realm, as aliens in the land of the stranger.

This, it has been authoritatively told us, is a colony of the Church of England. The Church of England, we are told, is the religion of the State, and rightfully claims the whole countenance and support of the government.

A seventh of the lands is set apart for a Protestant Clergy. The Church of England takes possession of them and holds them. Thousands are granted every year for the support of religion; they are granted to the Church of England; Government chaplains are appointed; they are of the Church of England. Scotchmen form no distinguished portion of the soldiery of the Empire; no provision is made for the Scotch soldiers receiving the ministrations of their own church, as in the case of their comrades from England. We remonstrated against being thus placed in subjection to the church of the sister kingdom.

The mode in which these remonstrances have been treated has served to make us more bitterly sensible of the complete and humiliating subjection to that Church in which it has been sought to place and hold us.

In answer to our remonstrances, Mr. Hagerman, then Solicitor, and immediately thereafter Attorney General, in an harangue, which the rector of Toronto characterizes as a splendid display of eloquence in defence of his church and Government, taxes us with presumption in daring remonstrate. "How," this legal adviser of the Government of this colony is reported, in his place in the House of Assembly, to have said, "how can you possibly place yourselves in comparison with the church of the State, or imagine yourselves anything else, in Canada, than a merely

tolerated sect? Has the Government viewed you in any other light? Does it recognise you as a body corporate? Can you in that capacity, hold even half a dozen acres of land? Nay, are you not tied down by degrading disabilities? Can your clergymen perform the marriage ceremony even among their own people without having to take attendance on the contemptible Court of Quarter Sessions? Does not every thing show you are meant to be, and must be, simply a dissenting sect, existing at all in Canada but by sufferance?"

When ourselves regarding our actual condition, we have been compelled to acknowledge that the picture drawn of it by the Attorney General is not unlike the reality. With sorrow—for the effects are melancholy,—with sorrow we acknowledge the degraded condition under which we exist. We admit that the general bearing of the government towards us has been adverse. Hence it is, from these untoward and discouraging circumstances, that many, many thousands of our countrymen dispersed over these extensive regions, are pining under deprivation of the religious ordinances of their father land; that many of them, alas, from their long continued deprivation of these ordinances, have ceased to feel the want, and, it is to be feared, have lapsed into a forgetfulness of the duties and privileges of religion itself.

Hence, too, arises the difficulty experienced in procuring clergymen of our church from our native land. Our brethren at home, though cheerfully devoting themselves to the duties of a laborious life, and contented with no very abundant portion of this world's goods, are not accustomed to occupy a humiliating position in society, to be slighted and regarded with jealousy by those in authority in the land, or placed in opposition to them. Hence it is also that the clergy of the Scotch Church in the Canadas number so few, and that instead of sixty we do not amount to three times sixty.

But though we have ever been obliged, in sadness of heart, to acknowledge the humiliating and discouraging condition in which adherents to our national church exists in Canada, we have ever asked ourselves, is it right, or fit, or just, that such should be our condition? Is there really a just cause why Scotchmen should not enjoy equal privileges, why they should be held inferior in Canada to Englishmen, why the one sharing at least equally the toil should not equally share the reward?

For any such cause we have looked in vain. We have recurred to the records of history; we find our country there gloriously distinguished as maintaining its liberties and independence entire, through many an arduous contest. We see England first consenting, to receive from us a King, and then seeking to be incorporated with us as a nation. Neither in our previous history, or the history of the Union, nor in the instrument of union, can we find any thing indicating inferiority or subjection; on the contrary, we find ourselves placed on a perfect equality with our brethren of

England, a community of all rights, privileges and advantages, that may or do belong to either being guaranteed, by the treaty of union, to the natives of both kingdoms.

We have looked around; we see a flourishing province, gained and preserved from the enemies of the empire by successive contests, in which the blood and energies of Scotchmen were expended in no scanty measure; reclaimed from the wilderness of nature by exertions in which our countrymen have borne no small part. We have cast our eyes over the wide Atlantic to our native land; we have seen our church honoured and respected as the great sustaining principle of whatever there is good and praiseworthy, and as contributing in no small degree to the general peace and prosperity of the Empire. In all this we have seen nothing that should render us inferior in Canada; nothing that should withdraw from us the assistance granted by Government to others; nothing that should expose us to degradation or insult. We have accordingly turned from Canada, and those directing the Councils of the colony, to the Imperial Government.

We have represented to the British Parliament that Canada is a British, not an English colony, and that we are not colonists of England, but of the Empire of Great Britain.

We have claimed therefore, in terms of the treaty of union, to have in Canada possession of a community of all the rights, privileges, and advantages enjoyed by the colonists of our sister kingdom. We have claimed, consequently, to be held, as well as the Church of England, an established church, and as such to have the protection and support of Government. We have claimed, as one of the established churches of the Empire, as one of the protestant churches recognised by the laws of the Empire, to share equally with the Church of England, in proportion to our numbers, in the lands set apart in Canada for the maintenance of a Protestant Clergy. In all these respects our claims have been fully admitted.

We had, in the first place, the satisfaction to learn that in 1819, before any proper representation of our situation was laid before the Imperial Government, the legal advisers of the Crown had given an opinion, in which they held our claim to rank in Canada as one of the Churches of the Empire to be unquestionable, and the right derived of consequence from it, to share with the Church of England in the lands set apart for the maintenance of a Protestant Clergy, to be perfectly valid.

In this opinion the Committee of the House of Commons in 1828, in their Report, coincided; and in January, 1832, His late most Gracious Majesty King William the Fourth, by Message, gave it the sanction of his Royal word in the following terms:—When speaking of the changes to be effected, he limited them as such “as may be carried into effect without sacrificing the joint claims of the Established Churches of England and Scotland.”

The Waste Lands which have been set apart

as a provision for these venerable bodies have hitherto yielded no disposable revenue.

To pass by other sanctions, we have the following recent correspondence between Lord Glenelg, Principal Secretary of State for the Colonies, and Principal McFarlane, Convener of the Committee of the Church of Scotland, on the Churches in the Colonies:—

The Committee, through Dr. McFarlane, thus address Lord Glenelg:—

Edinburgh, 21st March, 1837.

“The memorialists beg leave to repeat the assertion of a principle, which they apprehend cannot be controverted, viz., that by the Treaty of the Union the ministers and members of the Church of Scotland are entitled, in every Colony settled or acquired since the year 1706, to be on a perfect equality in all respects with those of the Church of England, in proportion to the number belonging respectively to each denomination.”

To this Sir George Grey replied, on 31st March 1837:—

“His Majesty’s Government see no reason to dissent from the general principle asserted by the memorialists. They are desirous of giving it the fullest practical operation which the means at their disposal for this purpose will allow.”

In addition to these assurances, and until other arrangements could be effected, in 1827, the annual sum of £750 from the proceeds of land sold to the Canada Company was appropriated to the aid of our Church. Meantime, the whole question of the manner in which the lands set apart for the benefit of a Protestant Clergy were to be disposed of was referred to the decision of the Provincial Legislature. We patiently and dutifully waited for the decision of the question in this mode, or, failing it, in any other in which in the opinion of the Government, it might be most advantageously disposed of.

Satisfied that the principle that we had a right to rank equally with the Church of England, an Established Church in Canada had received the fullest sanction, we murmured not at the immediate disabilities and vexations under which we laboured. We reposed in confidence on the justice and honour of the Imperial Government, convinced that it must be as eager as we could be to have those disabilities and vexations wiped away, since, this principle having been admitted in proportion as they were a grievance to us, as a heavy grievance we found them, in the same exact proportion were they an opprobrium to

In the whole course of the procedure there was only one doubt which could possibly have shaded the clear conviction established in our minds of the ultimate triumph of our cause; there was only one argument on which our opponents could insist; only one plausible objection which they could raise. By certain clauses of the Act of Parliament, 1791, it is declared to be lawful for the Sovereign to authorize the Governor, with the advice of the Executive Council of the Province, to establish over the whole Province of Upper

Canada Rectories of the Church of England, endowed from the lands reserved by the same statute for the support of a Protestant Clergy, "the incumbents of said Rectories to hold the same, and all rights, profits, and emoluments therewith granted, as fully and amply, and in the same manner, and on the same terms and conditions, and liable to the performance of the same duties, as the incumbent of a Parsonage or Rectory in England." It has been held by the party desirous of giving supremacy to the Church of England (the party which has ever had a preponderating influence in the Colonial Administration) that these clauses do in effect give a real Establishment to that Church as the dominant Church of the Colony, and place the adherents of the Church of Scotland, equally with the other denominations, in the class of Dissenters from the Ecclesiastical Establishment of the country.

It has, on the contrary, ever seemed to us, and we have ever maintained, that these clauses have no such effect, because, in the first place, like other clauses in the Act, they are by no means positive, but only possible and contingent, establishing nothing, but only giving the power, under conceivable circumstances, to make certain establishments. It has seemed to us, that they no more establish the Church of England as a dominant Church than the sixth, seventh, eighth, ninth, tenth clauses establish a dominant nobility.

The power is, indeed, we have considered, by the terms of the act, granted to the Sovereign of Britain, in the case of the nobility, to establish a body of titled and hereditary Legislators whenever it seems proper to the Sovereign so to do.

In like manner, in the case of the Church of England, the Sovereign has also, by the terms of the act, the power to authorize the Governor, with the advice of the Executive Council, to establish the Church of England as the dominant church in every township in the Province. But until the actual moment of the establishment of both, it has seemed to us that both Church and Nobility, and their powers and claims, must be held to be merely conceivable, and not actual existences. We were confirmed in this view by the tenor of the forty-first clause of the Act, which admits of whatever relates to ecclesiastical endowments being altered or repealed by Act of the Provincial Legislature, such act having previously obtained the Royal Assent.

Secondly. The actual establishment of the Church of England as the dominant church of the Colony has seemed to us so inconsistent with the spirit of the Imperial Constitution, as, unless under barely conceivable circumstances, such as a general conformity and amalgamation of the two nations in laws and religion, never to be capable of having a valid existence.

Thirdly. We conceived the recognition of our claims by the Imperial Government to be of itself an ample security against any attempt to give effect to the provisions of the act. We felt persuaded, that, acknowledging we held of right the same rank in Canada as the Church of Eng-

land, it never could be the intention of the British Government to bring our rights into controversy with the extensive but ill-defined claims that might be drawn from the attempt to give a real existence to the English Clergy, whose possible and ideal existence seems to have been contemplated by the framers of the act referred to.

Besides, and in the fourth place, had we conceived that there were any grounds for mistrust in this matter, we should have been completely reassured by the declaration of the members of the Imperial Government, of which the sentiments of the Right Honourable R. W. Horton, expressed before the committee of the House of Commons in 1827, may be cited as an instance. The question being put, "Should you not be disposed to say that Government and the Legislature of England should be very cautious of doing any thing that could give rise to the slightest suspicion that there was any intention of establishing a dominant church in that country?" Mr. Horton in his reply states, "That he conceives the words Protestant Clergy to refer to the two recognised Establishments;" and concludes by saying, "It appears to me quite conclusive that there was no intention of necessarily establishing the Church of England as a dominant church, inasmuch as the forty-first clause gives a power to the local Legislature, with the consent of the Crown, of altering all the provisions which are contained in the thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, and fortieth clauses."

Finally, after taking all these considerations into account, could any remaining doubt have lingered on our minds, it must have been dispelled by the reflection that the disposal of the funds on which the possible existence of a dominant church depended, and the adjustment of the Ecclesiastical Institutions of the country to its conditions and wants, were then placed by the Imperial Government, as already stated, under the award of the Colonial Legislature. We could not be supposed to imagine, that while these questions were unsettled, they should be taken out of the hands of the appointed Arbitrators, and virtually decided in favour of one of the contending parties.

Had we required any considerations to add force to our preceding conviction, all these would have presented themselves to us; but in reality we sought nothing further than the pledge of the Imperial Government, and in loyal and confident faith we rested on its reiterated assurances, of effective remedy being afforded us.

Thus were we waiting when the astounding intelligence was communicated to us, and that by the authority of the Imperial Government itself, the standing in the Colony, on the seeming possibility of some day attaining which the Church of England had hitherto grounded its extravagant pretensions, had been actually granted; that the clauses in the Act of 1791, empowering the Sovereign to authorize the Governor, with consent of the Council, to establish the Rectories of the Church of England, to be held as fully

ed amply, and on the same terms and conditions, as Parsonages or Rectories in England, had been actually carried into effect, and that the endowment had been made out of Lands the Clergy Reserves, the allotment of which, as has been stated, had been previously assigned to the Provincial Parliament.

The intelligence was of such a nature that at first it seemed to us incredible; and when the fact was known, it was publicly declared that Rectories had really been appointed and endowed over all the Province, we felt convinced that the measure must have been executed without sufficient authority, and would turn out to be ineffective and null. We were confirmed in this belief from the despatch of Lord Glenelg to Sir Francis Head, in which he states that the Home Government knew nothing of it, and therefore could not have authorized it, and were prepared to expect the decision which Law Officers of the Crown gave when they declared the Act neither legal nor valid.

Our minds were, in consequence, just beginning to recover from the surprise, the consternation, which the extraordinary attempt had excited, when they have been agitated afresh by the unexpected information, now confirmed to us by your Excellency's recent communication, that the Law Officers of the Crown have reversed their former opinion, affirming the establishment of Rectories, which they before held to be neither legal nor valid, to be now legal and valid, and that the Rectors of the Parishes so erected and endowed have the same ecclesiastical authority within their respective limits as is vested in the Rector of a Parish in England.

Against this evident violation of the rights of the Church of Scotland we protest, and that on the following grounds:—1st, the authority on which it is asserted they rest, is said to be derived from a despatch transmitted by Lord Bathurst, in the Reign of George the fourth, in 1825, but the existence of which was not known, and which was not acted on, till the Reign of William the fourth in 1836.

To us it appears that this is an authority, under any circumstances, insufficient for the purpose, a simple letter from the Secretary of State communicating his opinion in favor of the measure not constituting that full Royal sanction indicated by the terms of the Act. But should it, nevertheless, be maintained that this is a sufficient sanction, the Minister being to be held the organ through whom the Royal purpose authoritatively emanates, it must at least be granted that this purpose can only so emanate when guarded by those securities which are constitutionally provided for its being truly conveyed, uninfluenced by misrepresentation of arguments or mis-statements of facts.

The securities constitutionally required for the voice of the minister thus validly conveying the Royal will are his responsibility to his Sovereign and his country. He is responsible to the former for conveying it truly and exactly; he is responsible

to the latter for anything contained therein prejudicial to the subject, proceeding, as in such a case is constitutionally to be presumed, from the Royal Ear having been abused by his own mis-statements or mis-representations. This constant responsibility of the minister, one of the guiding principles of our free and enlightened Constitution, gives, it is acknowledged, great authority to all Acts of his that have been guarded by it, but in the case before us the sanction which ministerial Acts thus receive is entirely wanting.

In the first place, there is no security that themissive of Lord Bathurst in 1825 really contains the Will of His Majesty George the fourth, for it is first made public and cited as authority for the most important changes, now, when the monarch has for years been laid in the tomb; secondly, it issues without being subject to the constitutional check of the minister's responsibility to this country, for it issues long after Lord Bathurst's retirement from office, when he has no longer those consequences to dread to which the Minister subjects himself who is known to have given to his Sovereign culpable advice, or advice that incurs the just odium of the people.

On these grounds, therefore, we maintain that the despatch of Lord Bathurst in 1825 cannot in any sense be held to convey a trustworthy or valid expression of the Royal Will, and cannot consequently communicate that authority which the Act requires.

Such a course of procedure is also, we hold, obviously at variance with the enactments of this Statute of the 31st Geo. 3., from which it should derive its force.

The Statute empowers "His Majesty, His Heirs and successors, to authorize the Governor or Lieutenant Governor in Upper Canada from time to time, with the advice of such Executive Council as shall have been appointed by His Majesty, His Heirs and successors, to constitute and erect," &c. The phraseology clearly indicates a co-existing Sovereign, Governor, and Council.

But if the despatch of Lord Bathurst of 1825 be assumed as valid authority for establishing the Rectories, it is assumed contrary to the evident meaning of the expressions of the Act that the authority is valid, though given by one Sovereign, operated on in the reign of another; given to one Governor, neglected and disobeyed by him executed by a succeeding Governor; acted on not with the advice of Counsellors previously appointed, but with the advice of Counsellors not in office till long after; such a course of procedure, as it is evidently informal, must be held to be void. Our objections on this head are not merely formal: they are grounded upon a careful examination of the obvious intentions of the Act and inevitably arise from a due consideration of its provisions. All analogy justifies us in maintaining, that when the laws appoint different powers as necessary to the execution of any measure, they do so that these powers may do as checks on each other.

That they may effectually do so, however, it is less and void, because it can have neither power always provided that the Agency of these powers be concurrent; so only it is obvious can their mutually restraining influence be effectually exercised.

Not to enlarge on an admitted principle, we may ask what irremediable damage to British legislation, and what interminable confusion to its procedure, would not be produced were it competent for the House of Lords to pass any Bill which had ever passed any preceding House of Commons, or for any Sovereign to dissent to any Bill which had ever thus slipped through both Houses.

The obviously mischievous tendency to the introduction of such a mode of procedure into the Legislature of the Empire but faintly images its evils in this case, for not only would it render the provisions of the Statute nugatory in the prevention of error, but by removing the necessary publicity of the earlier stages of the process, and the check on human passions and prejudices which publicity furnishes, it would make these very provisions the instruments prompting to the commission of error.

It is obvious that, were it authorized, a Colonial Minister, restrained from advising certain measures by a salutary dread of the public odium and personal inconvenience likely to arise from them were they to be carried into immediate operation, might yet be easily led to procure the legal authority for their being effected were he aware that this could only happen at some remote period, when he would no longer personally have reason to fear the consequences. Is it to be believed that any Minister can thus indefinitely lock up the Royal prerogative? That the Royal Will is to be sought for, not in the breast of the living and breathing monarch, but in the musty folds of some old document deposited in the archives of the Colonial Executive Council? That from thence, to the astonishment of the reigning Sovereign and his Ministers, the dismay of the people, it is to issue for the purpose of changing the whole Ecclesiastical condition of the Province? Such a supposition seems to be an insult to common sense, a Libel on the well-guarded and intelligent, the open and straightforward course of British Legislation.

Finally, we hold the establishment of the Rectories invalid, and from the superior countervailing force of the articles of the treaty of Union of the two Kingdoms of England and Scotland.

We maintain that no act can truly emanate from the Sovereignty of Great Britain destructive of the principles from which the Monarchy derives its existence, and on which it rests; that the articles of Union of the two Kingdoms of England and Scotland, being the very basis of the Monarchy, can in no way possibly be infringed or violated, and that therefore, whatever pretends to violate or infringe them is to be esteemed essentially powerless and void. We maintain this measure is thus essentially power-

The articles of this Treaty, solemnly ratified by the delegates of both nations, ere they merged themselves into a United Kingdom, secure to the natives of both a community of all rights, privileges and advantages which do or may belong to either.

Canada being a colony conquered by the arms of both Kingdoms subsequently to their Union, every advantage which it presents ought consequently, in virtue of these Articles, to be available alike to Scotchmen and Englishmen. In contravention of this great and fundamental principle it is pretended that a despatch of Lord Bathurst's gives valid authority to the Governor and Executive Council of the province to portion it out into Rectories of the Church of England, and to divide among the incumbents of these Rectories the whole provision made for the support of a Protestant Clergy, amounting to a seventh part of the lands of the Country.

Before such authority in any measures that may have taken place in dependence on it can have validity, we demand that it be shown what equality of rights it allows between Scotchmen and Englishmen when it pretends to have power not to leave the former a spot to put his foot on where he shall not be subject to a rector of the Church of the latter, having, according to the opinion of law officers of the Crown, "the same Ecclesiastical authority as is vested in the Rector of a parish in England."

We demand that it be shown what equality of advantage it would permit to Englishmen and Scotchmen when it would bestow one seventh of the colony on the Church of the former, and would not leave a single acre for the church of the latter.

Until this be shown, we utterly deny the possible validity of the authority. We solemnly protest against any proceedings that may have taken place in reliance on it, and hold them ineffective and null, as being a direct opposition to the fundamental laws of the Monarchy.

To all which I respectfully crave your Excellency's attention, in name and by appointment of the commission of the Synod of the Presbyterian Church of Canada in connexion with the Church of Scotland.

(Signed) ALEXANDER GALE, Moderator.

Hamilton, 18th July 1838.

(No. 2.)

Executive Council Chamber at Toronto, Thursday, 9th August, 1838.

PRESENT :

The Honourable Robert Baldwin Sullivan, President of the Executive Council.

The Honourable William Allan.

The Honourable Augustus Baldwin.

The Honourable John Elmsley.

The Honourable William Henry Draper.

To His Excellency Sir George Arthur, K. C. H., Lieutenant Governor of the Province of Upper Canada, and Major General commanding Her Majesty's Forces therein, &c. &c. &c.

May it please your Excellency,

The Council have attentively perused the Memorial or Protest of the Rev. Mr. Gale, transmitted by him, as Moderator, "in name and by appointment of the commission of Synod of the Presbyterian Church of Canada in connexion with the Church of Scotland," to your Excellency,

They have noticed with mingled surprise and regret the tone of this Document, and the spirit in which the Reverend Moderator has felt it necessary to urge the claims of the members of the Established Church of Scotland resident in this Province upon her Majesty's Government.

The Council are sorry to observe the reference made to an alleged speech of the Attorney General as a member of the House of Assembly. After the full explanation which has been given by that officer with respect to it they can only suppose that this explanation has never come under the observation of the Reverend Moderator, or he would not have reiterated as genuine the Report of a speech the authenticity of which now rests on the sole authority of a fugitive traitor, and so far from desiring to exclude the Church of Scotland from participating in the Reserves the Journals of the House of Assembly prove the readiness of the Attorney General to place it in the power of the Crown to meet every claim that Church has advanced, in such manner as the Sovereign might deem just and expedient.

But whatever may have been the views of the Attorney General the Council think it right to observe that there is no possible ground on which they are to be looked on as the opinions of the Imperial or Local Government on this question, or as expressing the sentiments of either.

The express invitation on the part of His late Majesty to the House of Assembly, "to consider how the powers given to the Provincial Legislature by the Constitutional Act, to vary or repeal this part of its provisions, can be called into exercise most advantageously for the spiritual and temporal interests of His Majesty's faithful subjects in this Province," coupled with Lord Glenelg's despatch of the 15th December, 1835, to Sir F. B. Head shows clearly the desire of His late Majesty that the opinion of the Colonial Legislature should be fully expressed on this important subject; and that as regarded the Government, it was in every sense of the word an open question, on which all the members whether holding office or not, had the right of freely advocating their own views; in so doing, however, no one could in the slightest degree be considered as uttering the sentiments of the Government.

But the Council still more regret that in the assertion of the claims of the Church of Scotland topics should have been adverted to replete with perilous recrimination, and calculated to revive those feelings of hostility which, centuries ago, existed between the natives of North and South Britain. The Council cannot understand for what good purpose such allusions are made, or what connexion with the subject is to be found in the following passage: "We see England first consenting to receive from us a King, and then seeking to be incorporated with us as a nation."

The Council cannot pass over this passage, and others of a similar character, without declaring as their conviction that their utterance is uncalculated for by the occasion, and distasteful to the Scottish inhabitants of Upper Canada. They do not believe that Scotchmen, whether Episcopalian Catholics, or Presbyterians, whether members or dissenting from the Established Church of Scotland, desire that the ashes of wars, long since past and almost forgotten, or remembered only to be deplored, should be raked up in order to discover if there be yet a spark remaining which may seem to rekindle strife and animosity between them and their brethren of the United Kingdom.

The Council abstain from any examination of the arguments contained in this Protest, as not properly falling within the province of the Legislature; and notwithstanding the difficulties which have hitherto presented themselves on a satisfactory adjustment of the question, and though the agitation its present state has created is "a great evil, it is not such as to exclude every hope of mitigation by the natural progress of discussion, and by the influence of that spirit which in public affairs not seldom suggests to parties all solicitous for the general good some mutual surrender of extreme views, and some compromise on either side of difference, which at first sight might have appeared irreconcilable."

All which is respectfully submitted.

(Signed)

R. B. SULLIVAN, P. C.

(No. 3.)

To the Queen's Most Excellent Majesty.

May it please your Majesty.

We, Your Majesty's most dutiful, loyal, and devoted subjects, the under-signed Magistrate and others composing the grand inquest for the district of Bathurst in your Majesty's province of Upper Canada for your Majesty's Court of King's Bench, beg to approach your Majesty with the most profound respect for your Majesty's Royal Person, and our devoted and zealous attachment to that glorious Constitution which has placed Your Majesty and Your Majesty's illustrious forefathers on the Throne of one of the most powerful and most enlightened Empires in the

world. Whilst we unite our voices of congratulation with every corner of Your Majesty's vast dominions on Your Majesty's accession to be enthroned in the hearts of your people, we have to lament that these Provinces, which, in point of extent and intrinsic value, form no inconsiderable portion of the British Empire, should have been in exception to that loud burst of joyful acclamation which hailed the commencement of Your Majesty's Reign, by a Rebellion the most uncalled for and contemptible that ever disgraced any country: yet we rejoice to think that Your Majesty's loyal subjects, even without the aid of almost any Military force, have proven their sincere attachment to Your Majesty and the unrivalled Laws of their country, by crushing that foul and unnatural Rebellion to the dust.

Yet, whilst we rejoice that a Traitor dare not raise his voice in our Land, it is with extreme sorrow that we learn that an attempt is about to be made to wound the feelings, and, we dread, to alienate the affections of a great proportion of Your Majesty's truly loyal subjects, by encroachment on their most sacred Liberty—the Liberty of conscience, by attempting to establish the Church of England, with the same dominant powers as it possesses in England, in this Province.

Far be it from us to undervalue that Church at the Altar of which our beloved Sovereign bows, and to the doctrine and discipline of which several of ourselves firmly adhere, nor do we, in this our humble address to Your Majesty, mean to advocate any particular claim that it or the Church of Scotland has to any special endowments of lands, or other public grants or emoluments; but we beg most sincerely to assure Your Majesty, that in our opinion, it would be the most unwise and impolitic scheme that Your Majesty's advisers could possibly devise for the peace of this Province, to attempt to establish any Church with dominant powers within it.

It would be easy to show to Your Majesty the equal proportion which the members of the Church of England bear to the rest of the population, and which, we are convinced, would at once satisfy Your Majesty, that she has not a shade of claim, in point of numbers, to any supremacy; but we trust that this will not be necessary, and that Your Majesty will be graciously pleased to take such steps as will allay the fears of your loyal and dutiful subjects, and completely prevent

any true cause of envy or jealousy amongst them.

(Signed) James Wylie, Foreman
J. McKay, J. P.
Simon Fraser, J. P.
Donald Fraser, J. P.
Daniel O'Connor, J. P.
Josias Tayler, J. P.
John Ferguson, J. P.
John Haggart, G. J.
Arch. McNab of M Nab, J. P.
John McIntyre, J. P.
Daniel Fisher, J. P.
Wm. Thompson, G. J.
Anthony Leslie, J. P.
J. McNaughtan, J. P.
George Buchanan, J. P.
Henry Glass, J. P.
Matthew Leach, J. P.
Joshua Adams, J. P.

No. 13.

(No. 157.)

COPY of a DESPATCH from Lord GLENELG to Major General Sir G. ARTHUR, K. C. H., Lieutenant Governor of Upper Canada.

Downing Street, 24th October, 1838.

SIR,—I have received your despatch, No. 64, of the 22d September, transmitting the Copy of a memorial addressed to you by the Reverend Alexander Gale, as Moderator of the Commission of the Synod of the Presbyterian Church of Canada in connexion with the Church of Scotland, together with a minute of the Executive Council on this document.

Having in former communications fully expressed the views of Her Majesty's Government on the points to which this memorial refers, I have only to convey to you my approval of your determination, in accordance with those views, to endeavor to effect such an adjustment of the question as may be calculated to meet the reasonable wishes of the several Denominations of Christians in Upper Canada, and to express my hope that your efforts will be attended with a successful result.

I have had the honor to lay at the foot of the Throne the address to the Queen from the Grand Jury of the District of Bathurst, transmitted in your despatch, and Her Majesty was pleased to receive the same very graciously.

I have, &c.
(Signed) GLENELG.

APPENDIX.

From the Toronto Colonist, 22nd June, 1852.

THE RECTORIES.

We recently laid before our readers, in different publications of the *Colonist*, the entire contents of a Return to an Address of the House of Commons, for Copies or Extracts of the Correspondence, between the Lieutenant Governor of Upper Canada and the Secretary of State, on the subject of the creation of Rectories in that Province by Sir John Colborne. The documents thus published supply the fullest information on this important subject that has ever been laid before the Imperial Parliament; and much more ample information, in detail, than has ever been communicated to the Legislature and people of this Province, or the late Province of Upper Canada. We have no doubt but the information thus imparted, has proved generally acceptable, as it has placed in the hands of our readers, the particulars, by means of which they will be enabled to arrive at an impartial judgment, in respect to the legality of those Rectories.

As an appendix to the important documents already published, we give to-day, from another Parliamentary Return, in reference to the Clergy Reserves, a despatch and enclosure, No. 1, from Sir P. Maitland to Earl Bathurst, of date 17th May, 1819; and a despatch, No. 2, in reply, from Earl Bathurst to Sir P. Maitland, dated 6th May, 1820; also a despatch, No. 10, of the same return, from Sir P. Maitland to Earl Bathurst, dated 28th December, 1825.

These documents are of great importance, in connection with those already published, for the reason that, as far back as the year 1820, the Law Officers of the Crown in England, gave it as their opinion, that the Clergy Reserves were not confined solely to the clergy of the Church of England; and that from that time forward, the local Government of Upper Canada, aided by the law officers in the Province, systematically opposed the opinion of the law officers in England, instead of following their advice, as they were in duty bound to do. Nay more, that they had even suppressed and concealed that opinion from the Legislature and people of Upper Canada, and endeavored to influence public sentiment in an opposite direction. To such an extent was this system of concealment and deception carried,

that in March, 1831, an address to the King was adopted by the Legislative Council of Upper Canada, in which the following paragraphs occur:

"It is not our intention, on this occasion, to express any opinion respecting the claim which the Church of Scotland has preferred to a participation, [in the Reserves,] being content that it rest with your Majesty and with Parliament to decide upon it.

"We regret that it was ever thought advisable to agitate that question in this colony, where it could not be determined; and we earnestly hope for the sake of religion itself, that it may be speedily set at rest by a final decision. In the meantime, we cannot forbear to express our conviction that the rulers of the Church of Scotland are more sincerely attached to the principles of Christianity than to desire that the only permanent provision for religious instruction which exists in this country should be entirely abolished, because it has appeared doubtful whether the particular Church had a right to share in it. They must be aware that it is not with those feelings that the support of their venerable establishment is regarded in Scotland by their fellow subjects of other denominations; and we do them the justice to believe that they would be foremost to disavow any such sentiments in regard to this Province."

It may be regarded as strange, at the present day, that the Legislative Council of Upper Canada should have introduced, in 1831, such a paragraph into an address as we have quoted above, when in 1820, the Law Officers of the Crown in England had declared that "the provision made by the 31 Geo. 3, cap. 31, for the support and maintenance of a Protestant Clergy, are not confined solely to the Clergy of the Church of England but may be extended also to the Clergy of the Church of Scotland;" and the only way to account for the passing of such an address, is on the supposition that Earl Bathurst's despatch of 6th May, 1820, had never been communicated to the Legislative Council, but that some local opinion had been substituted in its place, to involve in doubt that which to the Law Officers of the Crown in England, appeared clear and beyond doubt. Had there been a different course pursued, by those in authority in Upper Canada, in regard to this question, subsequent to the receipt of Earl Bathurst's despatch of 6th of May, 1820, the probability is, that the question of the Clergy

Reserves would wear a different aspect, at the present day, from that which it now presents.

In 1831, the question of the settlement of the Clergy Reserves was referred to the Provincial Parliament of Upper Canada. The despatch of Lord Goderich, bears date the 21st of November of that year. The Imperial Government from that date regarded the property as being subject to Provincial Parliamentary control alone, and altogether removed from the interference of Imperial or Provincial administrations without the sanction first had and obtained of the Provincial Parliament. There are numerous evidences of that fact in the despatches. For example, we find that Lord Goderich, on 1st June, 1832, refused to comply with the terms of an address from the House of Assembly, because it appeared from the date of the address, that it was agreed to by the House, before the receipt of His Lordship's despatch, of 21st November previous, to which we have just now referred; and again, on 31st July, 1835, Lord Glenelg, in a despatch to Sir John Colborne, intimated that "His Majesty's Government concurring in the views adopted in regard to it, [the subject of the Reserves,] by the Earl of Ripon, [Lord Goderich] they are anxious not in any way to interfere with the deliberations of the Provincial Legislature."

The Executive Council of Upper Canada were less scrupulous. In January, 1836, passing over the sentiments of Lords Goderich and Glenelg, just quoted, Sir John Colborne issued patents for the establishment of Rectories, in Upper Canada, and their endowment out of these Reserves. By the minute of Council, on the authority of which those patents were issued, it appears that the pretended grounds upon which they proceed, were found in a private despatch of Lord Goderich, dated 5th April, 1832, having reference to the application of £4000 of money, and not to the establishment of Rectories; and the pretended extract from that despatch, in the minute of Council, was "not accurately described," to use the words of Lord Glenelg, at the time, in regard to it.

On referring the question to the law officers of the Crown, in England, they gave it as their opinion, on 8th June, 1837:—

- 1st. That, adverting to the terms of the Constitutional Act and the Royal Commission, the Lieutenant Governor, with the advice of the Executive Council, could not lawfully constitute, and erect, or endow, any Parsonage or Rectory, within the Province, without the further signification of His Majesty's pleasure.
- 2nd. That Lord Ripon's despatch, of 5th April, 1832, cannot be regarded as signifying His Majesty's pleasure for the erection of Parsonages, or for the endowment of them, or for either of those purposes.
- 3rd. That the erection and endowment of the fifty-seven Rectories, by Sir John Colborne, are valid and lawful act

4th. That the Rectors of the Parishes, so erected and endowed, have the same ecclesiastical authority, within their respective limits, as is vested in the Rector of a Parish in England.

It is not surprising that the promulgation of such an opinion, should have given great dissatisfaction, and produced great excitement, in Upper Canada. It carried on its face strong evidence of its absurdity ; but it was, nevertheless, clung to by those in authority here, as warmly, as it was violently opposed and denounced, by the people at large. It is admitted in No. 2 above, that Lord Ripon's [Goderich's] despatch, of the 5th April, 1832, conferred no authority, to establish or endow Rectories ; but nevertheless, it was that despatch, and that alone, which was cited by the Executive Council of Upper Canada, in their minute of 15th January, 1836, recommending the Lieutenant Governor to establish and endow them, upon which the order for Patents followed. It may be, that this despatch was selected by the Executive Council, on account of its being of later date, than the one from Lord Goderich, of the 21st November, 1831, by which the whole subject of the Clergy Reserves was referred to the Provincial Parliament for settlement. This may account too, for the quotation from that despatch, into the minute of Council, not having been, as stated by Lord Glenelg, "accurately described." The description, as it originally stood, would not answer the purpose, and it was, accordingly changed, to suit the purpose. In this way, if undetected, the show of authority from the Secretary of State for the establishment of Rectories, subsequent to the despatch of 21st November 1831, might have been successfully maintained. But, the deception having been detected by Lord Glenelg, His Lordship intimated, that the passage quoted, was "not accurately described," whereupon, in the first instance, and afterwards on reconsidering the case, the Law officers of the Crown in England, emphatically declared, that the despatch of 5th April 1832, did not authorize the establishment or the endowment of Rectories.

It might have been expected, that this would have sufficed to establish their illegality. It proved otherwise—and, Lord Bathurst's despatch of 22d July 1825, was called into requisition, to sustain them,—a despatch, that had been written during a previous reign, and since the writing of which, there had occurred, various changes of administration in England; besides that its authority had been positively revoked, by Lord

Goderich's despatch of 21st November 1831, and that revocation expressly confirmed by His Lordship, in a despatch dated 1st of June 1832, and again by Lord Glenelg, in a despatch dated 31st July 1835. It follows, therefore, that the pretended authority, on which the Law officers attempt to support their opinion, of 24th January 1835, in favor of the legality of the Rectories, being in fact no authority, the Rectories themselves must be alike without foundation, and, in the words of the opinion given, by the same Law officers, on 8th June 1837, "*not valid and lawful acts.*"

Had we only to do with the past, we might here bring this article to a close. We have to do with the present and future. The questions of the Reserves and Rectories, are made hobby-horses for political quacks, year after year, to the detriment of the country; and they have recently been brought officially under the notice of the Imperial authorities, as a result of local agitation in Canada, encouraged and promoted by members of the Provincial administration, and even by the Governor General himself—as witness Lord Elgin's celebrated despatch, in which His Excellency censures certain parties, for seeking sympathy through public opinion in England, in place of agitating the question by means of public opinion in the Province.

We have good authority for stating, that eminent Crown Counsel in England, on the most careful consideration of an elaborate case, submitted to them for opinion, during Mr. Hincks recent stay in London, deliberately gave it as their opinion, that the Rectories established by Sir John Colborne, in Upper Canada, were not lawfully done, and that they are not lawful and valid acts. The reference in this case, was not to the Law officers of the Crown, so called, but to eminent Queen's Counsel, whose opinions are of the highest value, where they are best known.

The probability is that fortified by this opinion steps will be taken, under the authority of the resolution passed by the Legislative Assembly, last Session, to test the validity of the Rectory Patents, and set them aside, in due form, by the authority of the proper tribunals of justice, as was recommended by Lord Glenelg, as far back as 1837, as appears by His Lordship's despatch of 6th July of that year, lately published in this journal. Whatever such judicial proceedings may result in, it is the determination to respect the rights of the present Incumbents of these Rectories.

At the same time, it is the resolve to establish no more, for which among other reasons, the Royal assent has been given to the act of the Canadian Parliament, of last Session, entitled "an act to repeal so much of the act of the Parliament of Great Britain, passed in the 31st year of the Reign of King George III. and Chaptered 31, as relates to Rectories, and the presentation of Incumbents to the same, and for other purposes connected with such Rectories." It is probable, that henceforward, the Church of England in the Colonies, will be managed under the authority of Mr. Gladstone's act, of the present Session of the Imperial Parliament, if passed, or by some similar measure.

As regards the Clergy Reserves, we have also good authority for stating, that the present Imperial Government will take no action, in reference to them, on the address of a defunct Provincial Parliament. They will be guided by the course that may be adopted, by the new Provincial Parliament, on this subject. What that course may be, we hope to witness, after August, for on the ninth of that roasting month in Canada, the collective wisdom of the Province, re doomed to assemble and wrangle together, on the rock of Quebec, when their more considerate and more fortunate confreres in Legislative labor in the mother country, will be starting with one accord to the moors, to shoot grouse on the 21th. May pleasure and profit be the result!

—No. 1.—

(No. 36.)

Copy of a Despatch from Lieutenant-Governor Sir P. Maitland, K. O. B. to Earl Bathurst.

YORK, Upper Canada, 17 May 1819.

My Lord,—I have the honor to transmit to your Lordship the copy of a petition from the Presbyterian inhabitants of the town of Niagara and its vicinity, praying for an annual allowance of £100 to assist in the support of a preacher.

The actual product of the Clergy Reserves is about £700 per annum. This petition involves a question on which, I perceive, there is a difference of opinion, viz. Whether the Act intends to extend the benefit of the Reserves for the maintenance of a Protestant clergy, to all denominations, or only to those of the Church of England. The law officers seem to incline to the latter opinion. I beg leave to observe to your Lordship, with much respect, that you apply to this petition will decide a question which of much interest, and on which there is a lively feeling throughout the province.

To similar requisitions of petitioners of our own church, it has been replied, that I hoped

when the bishop should arrive, some satisfactory arrangement might be made.

I have, &c.,
(Signed)

P. MAITLAND,
Lieutenant-Governor.

Enclosure in No. 1.

To His Excellency Sir Peregrine Maitland, K. O. B., Lieutenant-Governor of the Province of Upper Canada, &c. &c. &c.

The Petition of the Presbyterian inhabitants of the Town of Niagara and its Vicinity,
Humbly sheweth,

That previous to the late American war, they had built and erected, at a great cost and expense, a very respectable Presbyterian church in the town of Niagara, and which was the first building set fire to and burnt down by the American army; they had also a clergyman for one-half of the time, and regret to state that they are now without a preacher, although they have again erected a very decent temporary house for worship, in part of which they have allowed the district school to be taught. From the losses sustained by those of the congregation during the late war, and from several others having removed from the town, these remaining find themselves unable to pay such a sum as would be necessary to pay a preacher of respectability; and as they are truly anxious to obtain one of the Established Church of Scotland, if possible.

They, therefore, humbly pray, that your Excellency would take their peculiar case into consideration, and that you would be pleased to allow, or grant to the Presbyterian congregation of the town of Niagara, the annual sum of £100 in aid, out of the funds arising from Clergy Reserves, or any other fund at your Excellency's disposal, of which sum, together with what the congregation would obligate themselves to pay, they trust would amount to such a sum as would be competent to induce a man of abilities and respectability to come from Scotland, or such other part of Great Britain as your Excellency might approve of and be pleased to recommend.

Should your Excellency not have it in your power to grant the prayer of your petitioners, may they, in such case, humbly pray your Excellency's friendship and interest with the Government at home.

And your petitioners, as in duty bound, will ever pray.

Niagara, 30th March, 1819.

37 Signatures.

—No. 2.—

Copy of a Despatch from Earl Bathurst to Lieutenant-Governor Sir P. Maitland, K. O. B.

Downing-street, 6th May, 1820.

SIR,—Having requested the opinion of His Majesty's law officers as to the right of the dissenting Protestant ministers resident in Canada, to partake of the lands directed by the Act of the 31st Geo. 3, c. 31, to be reserved as a provi-

sion for the support and maintenance of a Protestant clergy, I have now to acquaint you that they are of opinion that though the provisions made by the 31st Geo. 3, c. 31, ss. 36 & 42, for the support and maintenance of a Protestant clergy, are not confined solely to the clergy of the Church of England, but may be extended also to the clergy of the Church of Scotland; yet that they do not extend to dissenting ministers, since the term "Protestant clergy" can apply only to the Protestant clergy recognized and established by law.

They are further of opinion, that with respect to the 38th clause, "which empowers His Majesty to authorize the Governor to constitute and erect parsonages or rectories according to the establishment of the Church of England," provides also, "that he may endow every such parsonage or rectory with so much of the lands allotted and appropriated in respect to any land within such township or parish which shall have been granted, as the Governor, with the advice of the Executive Council, shall judge to be expedient."

Under these terms any particular parsonage or rectory might be endowed with the whole lands allotted and appropriated in that township or parish; and it would be inconsistent with this discretionary power that any proportion of such lands should be absolutely retained for any other clergy than those mentioned in the 38th clause; and they are of opinion that it is not incumbent on His Majesty so to retain any proportion of such lands.

I have therefore to acquaint you, that although it would be, generally speaking, most expedient to make, in the first instance, a competent provision for the Church of England in the colony, yet in every parish in which the members of the Church of Scotland may greatly predominate, it appears both advisable and proper that a propor-

tionate allotment should be reserved for the provision for a minister of that Church.

(Signed)

I have, &c.,
BATHURST.

—No. 10.—

(No. 206.)

Copy of a Despatch from Lieutenant-Governor Sir P. Maitland, K. C. B. to Earl Bathurst.

Upper Canada, York, 28 December, 1825.

My Lord,—In looking over the book containing my despatches to your Lordship, I observe an error in the entry of that of the 17th May, 1819, which, as it may possibly also exist in the original transmitted to your Lordship, I am desirous should be corrected.

After stating that a difference of opinion prevails in this province, whether the 31st Geo. 3, intends that the proceeds of the Clergy Reserves should extend to Protestant ministers of all denominations, or be confined to those of the Established Church of England, the sentence, as recorded here, runs, "the law officers seem to incline to the former opinion;" whereas it should have been, "the law officers seem to incline to the latter opinion," the word "incline" having been used instead of one of more decided import, on account of some doubts having been entertained by the then Chief Justice of the province on the subject, but which have since, I have reason to think, been, on full consideration, entirely removed. The other law officers were always, I believe, decidedly of opinion that the Reserves appertained exclusively to the Church of England.

I am desirous that this explanation should be recorded, in case any future agitation of the question should render it necessary to refer to my communications on the subject.

(Signed)

I have, &c.,
P. MAITLAND.

